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REVISED CODES OF MONTANA

VOLUME 1

Part 1

1963 Cumulative Pocket Supplement

Containing

AMENDMENTS TO PROVISIONS AND NEW PROVISIONS
APPROVED SINCE PUBLICATION OF REPLACEMENT
VOLUME 1 (PART 1) OF THE 1947 REVISED CODES

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 1
(PART 1) THROUGH VOLUME 377, PACIFIC
REPORTER (2ND SERIES)

AND

PARALLEL REFERENCE TABLES SUPPLEMENTING
REPLACEMENT VOLUME 1 (PART 1)

Edited by

A. WAYNE GUERNSEY, A.B., LL. B.

and

THE PUBLISHERS' EDITORIAL STAFF

Editorial Supervisor

WESLEY W. WERTZ

THE ALLEN SMITH COMPANY

Publishers

Indianapolis, Indiana



REVISED CODES OF MONTANA

VOLUME I

Part I

1963 Cumulative Pocket Supplement

Containing

AMENDMENTS TO PROVISIONS AND NEW PROVISIONS
APPROVED SINCE PUBLICATION OF REPLACEMENT
VOLUME I (PART I) OF REVISED CODES

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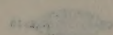
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Helena, Montana



CONSTITUTIONAL AMENDMENTS IN VOLUME 1 (PART 1)

For index see pocket supplement to Replacement Volume 9

City, town, township, school district, or high school district indebtedness, Art. XIII, sec. 6.

County attorney, qualifications and election, Art. VIII, sec. 19.

District of Columbia voting, U. S. Const. Amd. 23.

Judges and justices, salary, Art. VIII, sec. 29, note.

Adopted
✓

AMENDMENTS

TO THE

CONSTITUTION OF THE UNITED STATES

AMENDMENT 23

1. The district constituting the seat of government of the United States shall appoint in such manner as the congress may direct:

A number of electors of president and vice-president equal to the whole number of senators and representatives in congress to which the district would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of president and vice-president, to be electors appointed by a state; and they shall meet in the district and perform such duties as provided by the twelfth article of amendment.

2. The congress shall have power to enforce this article by appropriate legislation.

The twenty-third amendment was submitted by Congress on June 16, 1960, declared in force April 3, 1961.

Added - Amendment 24

THE ENABLING ACT

§ 11. * * *

Leasing for Underground Storage

The law authorizing the lease of state lands for underground storage of natural

gas does not violate this section. State ex rel. Hughes v. State Board of Land Commrs., 137 M 510, 353 P 2d 331, 335.

CONSTITUTION

OF THE

STATE OF MONTANA

ARTICLE III—A DECLARATION OF RIGHTS OF THE PEOPLE OF THE STATE OF MONTANA

Sec. 1.

References

Cited in *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912.

Sec. 2.

References

Cited in *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 909, 912.

Sec. 4.

Corporate License Tax on Organization of Church Society

The corporate license tax imposed under R. C. M. 1947, section 84-1501 et seq., on the agricultural activities of a religious society formed for the purposes of farm-

ing, stock growing, and other branches of agriculture does not conflict with constitutional provisions relating to religious freedom. *State v. King Colony Ranch*, 137 M 145, 350 P 2d 841.

Sec. 8.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 211.

Sec. 11.

Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 918.

The provisions of section 32-1625, relating to the costs of relocating utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 35.

Sec. 14.

Just Compensation

In eminent domain proceedings, the jury findings will generally not be disturbed on appeal unless they are so obviously and palpably out of proportion to the injury done as to be in excess of just compensation provided by this section.

State v. Peterson 134 M 52, 328 P 2d 617, 620.

References

Cited or applied in *Neil v. Lewis and Clark County*, 133 M 323, 323 P 2d 270, 273.

Sec. 15.

Rights-of-Way of Necessity

There are no implied grants or reservations of rights-of-way of necessity in Montana. Property for roads must be con-

demned. *Simonson v. McDonald*, 131 M 494, 311 P 2d 982, 984, overruling *Herrin v. Sieben*, 46 M 226, 127 P 323, and *Violet v. Martin*, 62 M 335, 205 P 221.

Sec. 16.

Perfection of Appeal

Even though supreme court dismissed appeal in criminal case because court-appointed counsel was late in filing notice of appeal, the court considered the questions presented on appeal because defendant had no voice in the appointment of counsel. *State v. Frodsham*, 139 M 222, 362 P 2d 413, 418.

Right to Introduce Evidence

In a murder prosecution the court properly refused to permit the defendant to introduce the results of a lie-detector test given five and one-half months after the crime to which it referred. *State v. Hollywood*, 138 M 561, 358 P 2d 437, 444.

References

Kuhl v. District Court, 139 M 536, 366 P 2d 347, 362.

Sec. 18.

Double or Former Jeopardy

Defendant charged with sale of intoxicating liquor to a minor was not placed in former jeopardy in violation of this

section, by a dismissal of the complaint upon his demurrer in justice court without any further proceedings. *State v. Moore*, 138 M 379, 357 P 2d 346, 347.

Sec. 19.

Amount of Bail

The amount of bail which the judge may fix is within his sound legal discretion, and is always to be a reasonable amount. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407.

The trial judge in determining the amount of bail to be fixed, should take into consideration the enormity of the crime charged; the maximum penalty which the law authorizes; the pecuniary condition of the defendant; the probability of the defendant's flight to avoid punishment; his general character and reputation; the apparent nature and strength of

the proof as bearing upon the probability of his conviction; and other matters bearing upon the particular case. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407.

Court did not err in refusing defendant's motion to reduce bail which was initially set at \$25,000, where the person assaulted was in a very precarious condition and it was not known whether he would live or die. When the judge was advised that the victim would probably live, he reduced the bail to \$7,500 which was a very reasonable amount. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407, 408.

Sec. 20.

Tax Penalty

The double penalty provided for in the income tax statute (84-4924, subd. 2, before the 1955 amendment) did not violate this section. *State ex rel. Hardy v. State Board of Equalization*, 133 M 43, 319 P 2d 1061, 1063.

References

Cited in *State v. McLeod*, 131 M 478, 311 P 2d 400, 407.

Sec. 23.

References

Cited or applied in *Application of Banschbach*, 133 M 312, 323 P 2d 1112,

1113; *Seibel v. Byers*, 136 M 39, 344 P 2d 129, 139.

Sec. 27.

Arbitrary Exercise of Licensing Power

The arrest of a person for operating a dry cleaning call office within the city without a license, where city's licensing ordinance did not cover such a business,

violated the provisions against the taking of property without due process of law. *State ex rel. Willumsen v. City of Butte*, 135 M 350, 340 P 2d 535.

Criminal Appeals

Dismissal of a criminal appeal for failure to file timely notice of appeal is not a denial of due process, even though the failure was that of court-appointed counsel in whose appointment defendant had no voice. *State v. Frodsham*, 139 M 222, 362 P 2d 413, 419.

Destruction of Property Without a Trial or Hearing

Proceedings for the destruction of property in many cases must necessarily be summary and without a previous trial or hearing in such cases, and such proceedings are due process. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 31.

Fundamental Rights

"Due process of law" refers to and means certain fundamental rights which our system of jurisprudence has always recognized, that is, of requiring notice to be given and a hearing had before the property may be taken, or impressed with a lien, giving to the owner thereof these constitutional prerogatives. *Great Northern Railway Co. v. Roosevelt County*, 134 M 355, 332 P 2d 501, 505, distinguished in 138 M 69, 354 P 2d 1056, 1058.

Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 918.

The health district law (sections 69-801 to 69-814) does not violate this section. *Bacus v. Lake County*, 138 M 69, 354 P 2d 1056, 1058.

Sec. 29.

Taxation

The "unless" clause of this section operates in the area of taxation and Art. XII, section 1a, authorizing an income tax, is merely permissive. *State v. Toomey*, 135 M 35, 335 P 2d 1051.

References

Cited in *Professional & Business Men's Life Ins. Co. v. Bankers Life Co.*, 163 F

Milk Control Act

The price-fixing provisions of the Milk Control Act (27-401 et seq.) withstand the due process test. *Montana Milk Control Board v. Rehberg*, — M —, 376 P 2d 508, 514.

Rural Fire Districts Law

Rural fire districts law, sections 11-2008, 11-2009, before 1957 amendment, was unconstitutional as being in direct conflict with this section. *Great Northern Railway Co. v. Roosevelt County*, 134 M 355, 332 P 2d 501, 502, 505, 506, distinguished in 138 M 69, 354 P 2d 1058.

Statutes and Proceedings Held Valid Under This Provision

A city, the chief of police, and police officers were not liable to a dog owner for damages, where the owner's dog was killed by officers acting under an emergency quarantine measure which was passed to meet a threatening situation involving rabies. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29.

A rule made by a board of health which has a relation to securing protection from bites of animals which may be rabid is a proper exercise of its functions, and determination of the means of meeting a threatening situation has been vested in the board of health, and not in the courts. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 31.

Tax Penalty

The double penalty provided for in the income tax statute (84-4924, subd. (2), before the 1955 amendment) did not violate this section. *State ex rel. Hardy v. State Board of Equalization*, 133 M 43, 319 P 2d 1061, 1064.

Supp 274, 279; *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 653; *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912; *Seibel v. Byers*, 136 M 39, 344 P 2d 129, 139; *State ex rel. Ronish v. School Dist. No. 1*, 136 M 453, 348 P 2d 797, 801, 78 ALR 2d 1012; *State ex rel. Livingstone v. Murray*, 137 M 557, 354 P 2d 552, 556.

ARTICLE IV—DISTRIBUTION OF POWERS

Sec. 1.

Counties

Counties are administrative or executive bodies of the state and the same rules apply as apply to any state agency in so

far as this section is concerned. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1024.

Delegation of Powers by the Legislature

Sections 69-809 and 69-813 relating to health districts violate this section by delegating legislative power to a board. *Bacus v. Lake County*, 138 M 69, 354 P 2d 1056, 1063.

Chapter 41 of Title 16, giving the county commissioners power to establish zoning districts and to create a commission, contains sufficient guidelines so that it is not an invalid delegation of legislative powers. *City of Missoula v. Missoula County*, 139 M 256, 362 P 2d 539, 542, explained in 362 P 2d 1021, 1023; *Doull v. Wohlschlager*, 139 M 274, 362 P 2d 542, 543.

The provisions of section 11-3801 et seq., granting zoning powers to city-county planning boards and to county commissioners, are invalid as an unauthorized delegation of legislative power to counties. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1025.

References

Cited or applied in *Ruona v City of Billings*, 136 M 554, 323 P 2d 29, 32 (dissenting opinion); *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912.

ARTICLE V—LEGISLATIVE DEPARTMENT

Sec. 1.

References

Cited or applied in *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 32 (dis-

senting opinion); *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912.

Sec. 11.

References

State ex rel. Easbey v. Highway Patrol Board, — M —, 372 P 2d 930, 939.

Sec. 20.

References

Cited in *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 654.

Sec. 23.

Acts Not Violating this Provision

Laws of 1955, chapter 204, amending section 84-4502 and carrying a title which is practically identical with the heading of this section as stated in the 1947 Codes and properly including additional requirements for bringing actions to recover taxes paid under protest, does not violate this constitutional provision. *Van Tighem v. Linnane*, 136 M 547, 349 P 2d 569, 571.

The title of the County Water District Act (16-4501 to 16-4534) does not violate this section. *Parker v. County of Yellowstone*, — M —, 374 P 2d 328, 334.

Sec. 24.

References

State ex rel. Easbey v. Highway Patrol Board, — M —, 372 P 2d 930, 939.

Sec. 26.

Divorce Proceedings

Proceedings for divorce undoubtedly are statutory, but jurisdiction in matters of

Effect of Subsequent Codification on Defect

Section 91-4321 as it is now written was enacted in 1943, and was carried forward in our Codes of 1947 without change. The 1947 Codes were regularly adopted by the legislature with this act incorporated therein without reference to its original title. Any defect in title was cured by its adoption into the 1947 Code. *State v. Rice*, 134 M 265, 329 P 2d 451, 453.

divorce is constitutional and may not be abridged. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 232.

Operation and Effect in General

Chapter 34, Laws of 1957 (43-709 to 43-715), creating the legislative council, does not violate this section. *State ex rel. James v. Aronson*, 132 M 120, 314 P 2d 849, overruling *State ex rel. Mitchell v. Holmes*, 128 M 275, 274 P 2d 611.

Special or Local Laws Forbidden

(Deduction of workmen's compensation benefits in determining retirement pay of

public employee.) The provision in section 68-901, subd. (h), requiring the deduction of workmen's compensation benefits in determining the retirement pay of a public employee who is receiving workmen's compensation for a total disability is unconstitutionally discriminatory in treating totally disabled employees less favorably than those only partially disabled. *State ex rel. Morgan v. White*, 136 M 470, 348 P 2d 991.

Sec. 29.**Relocation of Utilities**

The provisions of section 32-1625, relating to the costs of relocating utility facilities,

do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 35.

Sec. 32.**Construction**

This section refers to the raising of money for defraying the expenses of the general government. *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 648.

for local purposes are not bills for "raising revenue" within the meaning of this section. *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 649.

License Tax

Bills imposing tax or license fee to enforce policing regulation are not revenue raising measures. *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 648.

Operation and Effect

Chapter 197, Laws of 1957, authorizing indebtedness to be incurred by state for construction of educational facilities is illegal, unconstitutional and void, for the reason that it was a revenue bill which originated in the senate, contrary to the interdiction of this section. *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 654.

Local Taxes

Laws delegating authority to local governmental units to levy and collect taxes

Sec. 34.**Laws Not Violating This Provision**

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans

eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 920.

Sec. 36.**Laws Not Violating This Provision**

Section 27 of the County Water District Act (16-4527) does not violate this section by delegating to a corporation the power to tax for the general health, safety, and welfare of property owners without regard to benefits to the property so taxed. *Parker v. County of Yellowstone*, — M —, 374 P 2d 328, 331.

The price-fixing provisions of the Milk Control Act (sections 27-401 (k), 27-405 (2), 27-407, 27-416) do not violate the provisions of this section. *Montana Milk Control Board v. Rehberg*, — M —, 376 P 2d 508, 515, 516.

Sec. 39.**Relocation of Utilities**

The provisions of section 32-1625, relating to the costs of relocating utility facilities,

do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 36.

Sec. 40.

Constitutional Amendments

It was a fatal defect for the legislature to ignore the governor, in neglecting and refusing to present proposed constitutional amendments to the governor in full as

passed by the house and senate for the governor's approval or disapproval. *State ex rel. Livingstone v. Murray*, 137 M 557, 354 P 2d 552, 556.

ARTICLE VII—EXECUTIVE DEPARTMENT

Sec. 1.

References

Cited or applied in *State v. Rother*, 130 M 357, 303 P 2d 393 at 401 (dissenting

opinion); *State ex rel. Easbey v. Highway Patrol Board*, — M —, 372 P 2d 930, 931.

Sec. 9.

Parole

The board of pardons has no power to pardon or commute a sentence, and when it grants a parole, the effect is not to

extinguish the sentence but merely to change the conditions of custody. *State ex rel. Herman v. Powell*, 139 M 583, 367 P 2d 553, 556.

Sec. 12.

Constitutional Amendments

It was a fatal defect for the legislature to ignore the governor, in neglecting and refusing to present proposed constitutional amendments to the governor in full as

passed by the house and senate for the governor's approval or disapproval. *State ex rel. Livingstone v. Murray*, 137 M 557, 354 P 2d 552, 556.

Sec. 15.

Casting Deciding Vote

The lieutenant governor of Montana, while presiding as president of the senate, possessed the requisite power to enable or entitle him to cast the deciding vote on third reading of House Bill No. 342, as amended [1961 amendment of section 31-135], at a time when the senators

then present and voting were equally divided. *State ex rel. Easbey v. Highway Patrol Board*, — M —, 372 P 2d 930, 939.

References

Cited or applied in *State v. Rother*, 130 M 357, 303 P 2d 393 at 401 (dissenting opinion).

Sec. 20.

References

Cited or applied in *State v. Rother*, 130

M 357, 303 P 2d 393 at 401 (dissenting opinion).

ARTICLE VIII—JUDICIAL DEPARTMENTS

Sec. 1.

References

City of Bozeman v. Ramsey, 139 M 148,

362 P 2d 206, 211; *State v. Frodsham*, 139 M 222, 362 P 2d 413, 416.

Sec. 2.

References

State v. Frodsham, 139 M 222, 362 P 2d 413, 416.

Sec. 3.

Exclusive Power

The constitution vests in the courts the exclusive power to construe and interpret legislative acts, as well as provisions of

the constitution. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 913.

Scope of Power to Issue Writs in General

Even if a stay, in a case where a writ of mandate is issued by a district court to compel the issuance of a license, is not provided for in the code, still the supreme court has power under this section to issue a supersedeas, or other appropriate writ, to effectuate its appellate jurisdiction,

thus to insure the aggrieved board an appeal that otherwise might be of no value. *Gill v. Rafn*, 133 M 505, 326 P 2d 974, distinguished in 136 M 453, 456, 348 P 2d 797, 799.

References

State v. Frodsham, 139 M 222, 362 P 2d 413, 416.

Sec. 11.**Divorce Proceedings**

Proceedings for divorce undoubtedly are statutory, but jurisdiction in matters of divorce is constitutional and may not be abridged. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 232.

Prohibition—Ministerial Function

This section does not give the district courts the jurisdiction to issue a writ of

prohibition to control the discretion of an administrative body in carrying out a ministerial function. *State ex rel. Lee v. Montana Livestock Sanitary Board*, 135 M 202, 339 P 2d 487.

References

Cited or applied in *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1092; *Deich v. Deich*, 136 M 566, 323 P 2d 35, 38.

Sec. 12.**References**

Cited or applied in *Deich v. Deich*, 136 M 566, 323 P 2d 35, 38.

Sec. 14.**References**

Cited or applied in *Deich v. Deich*, 136 M 566, 323 P 2d 35, 38.

Sec. 15.**Notice of Appeal**

Even though the supreme court dismissed an appeal in a criminal case because of failure to file timely notice of appeal, the court considered the questions raised, where the fault was that of court-appointed counsel in whose appointment

defendant had no voice. *State v. Frodsham*, 139 M 222, 362 P 2d 413, 418.

References

Cited in *Gill v. Rafn*, 133 M 505, 326 P 2d 974.

Sec. 19. There shall be elected at the general election in each county of the state one county attorney, whose qualifications shall be the same as are required for a judge of the district court, except that he must be over twenty-one years of age, but need not be twenty-five years of age, and whose term of office shall be four years, and until their successors are elected and qualified. He shall have a salary to be fixed by law, one-half of which shall be paid by the state, and the other half by the county for which he is elected, and he shall perform such duties as may be required by law.

Compiler's Note

This constitutes sec. 19 of article VIII as amended by act approved March 6, 1961 (Ch. 164, Laws 1961), adopted at the general election of November, 1962.

This amendment increased the county attorneys' term of office from two to four years and eliminated a provision applicable only to the first county attorneys elected under the Constitution.

Sec. 24.**References**

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 211.

Sec. 28.

References

Cited or applied in First Nat. Bank of

White Sulphur Springs v. Stoyanoff, 137 M 20, 349 P 2d 1016, 1020.

Sec. 29.

Proposed Amendment

Chapter 92, Laws of 1963, proposed an amendment to this section to be submitted to the voters in November, 1964. After the amendment, if it is approved by the voters, this section will read: "Sec. 29.

The justices of the supreme court and the judges of the district courts shall each be paid quarterly by the state, a salary, which shall not be diminished during the terms for which they shall have been respectively elected."

ARTICLE IX—RIGHTS OF SUFFRAGE AND QUALIFICATIONS TO HOLD OFFICE

Sec. 2.

Operation and Effect

This section, in adding the property holding qualification to voting on debts or liabilities, confined the additional qualification to only those debts or liabilities which look to ad valorem taxes for their retirement. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 915.

This section amended the words "debt or liability" as they appear in section 2, article XIII of the Montana Constitution, and has effectively confined them to debts or liabilities which must be retired out of ad valorem taxes. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 916.

ARTICLE XI—EDUCATION

Sec. 1.

References

Cited in State ex rel. Ronish v. School

Dist. No. 1, 136 M 453, 348 P 2d 797, 800, 78 ALR 2d 1012.

Sec. 7.

Operation and Effect

The use of the term "all" is not to be taken in its universal and omnibus sense; rather, it was meant to be limited and qualified to conform to good reason to carry out the other purposes of the constitution such as to have a general, uniform and thorough system of public schools. State ex rel. Ronish v. School Dist. No. 1, 136 M 453, 348 P 2d 797, 78 ALR 1012.

A reasonable interpretation of constitutional and statutory provisions specifying that school shall be open to children be-

tween the ages of 6 and 21 years, read again in connection with other provisions requiring a thorough education, is that a child must be allowed to enter the first grade sometime during his seventh year, after reaching his sixth birthday. Each local school district has the power to admit children into the first grade who are not yet 6 years of age and each school district may establish a "cut-off" date governing entry into the first grade. State ex rel. Ronish v. School Dist. No. 1, 136 M 453, 348 P 2d 797, 78 ALR 2d 1012.

ARTICLE XII—REVENUE AND TAXATION

Sec. 1.

Construction with Other Sections

This section and section 11 of article XII of the Montana constitution must be construed together with section 15, which refers specifically to the state board of equalization. Yellowstone Pipe Line Co. v. State Board of Equalization, 138 M 603, 358 P 2d 55, 66.

License Tax—Purposes for Which License Tax May Be Levied

It was not the intention in authorizing the legislature to impose a license fee, to differentiate between the license tax, so-called, and the license fee extracted in regulatory matters, but rather to refer the general subject of licenses to the legislature. Montana Milk Control Board v. Maier, — M —, 367 P 2d 305, 306.

Sec. 1a.**Income Tax**

The provisions of section 84-4905, before the 1955 amendment, relating to adjusted gross income, did not violate this section. *State ex rel. Anderson v. State Board of Equalization*, 133 M 8, 319 P 2d 221, 228.

This section does not impose an affirmative duty to replace property taxes entirely

with income taxes. *State v. Toomey*, 135 M 35, 335 P 2d 1051.

The mere fact that the income-tax law does not operate simultaneously upon the incomes of persons, firms, and corporations does not make it invalid. *State v. Toomey*, 135 M 35, 335 P 2d 1051.

Sec. 2.**Corporate License Tax on Organization of Church Society**

The corporate license tax imposed under R. C. M. 1947, section 84-1501 et seq., on the agricultural activities of a religious society formed for the purposes of farm-

ing, stock growing, and other branches of agriculture does not conflict with constitutional provisions relating to religious freedom. *State v. King Colony Ranch*, 137 M 145, 350 P 2d 841.

Sec. 3.**Adverse Possession**

One in actual possession of surface land, who owned it in fee simple and paid taxes upon it for over thirty years, could not acquire an undivided one-fourth mineral interest, reserved in a deed and thereby severed entirely from the land, by adverse possession, where the minerals were not and could not be assessed separately for taxation under this section. *Johnson v. Unknown Heirs*, — M —, 368 P 2d 577, 581.

Annual Net Proceeds Tax

"Average of annual net proceeds" as provided by section 84-5408, as amended

in 1959, is not the same as the "annual net proceeds" provided by this section and therefore the law is unconstitutional. *State ex rel. Roberts v. State Board of Equalization*, 138 M 138, 355 P 2d 150, 152.

"Mining Claim"

A "mining claim" is not restricted to a single mining location but may include as many locations as a miner can purchase, and the ground covered by all will constitute a mining claim. *United States Gypsum Co. v. Schreiner*, 135 M 312, 340 P 2d 548.

Sec. 11.**Construction with Other Sections**

This section and section 1 of article XII of the Montana constitution must be construed together with section 15, which

refers specifically to the state board of equalization. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 66.

Sec. 12.**Laws Not Violating This Provision**

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans

eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 920.

Sec. 15.**Construction with Other Sections**

Sections 1 and 11, of article XII of the Montana constitution must be construed together with this section. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 66.

Intervention of Court

Court may not intervene where action of board is not arbitrary, fraudulent or contrary to law. *State ex rel. Reid v. District Court*, 134 M 128, 328 P 2d 634, 635.

Powers of State Board of Equalization

Board is charged with the duty of adjusting and equalizing the valuation of all taxable property among the several counties and between individual taxpayers. *State ex rel. Reid v. District Court*, 134 M 128, 328 P 2d 634, 635.

The state board of equalization has the power to determine what a particular class should include. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 67.

Uniformity of Taxation

As long as the state board of equalization treats property of similar nature and productivity the same, it cannot be said that the constitutional mandate of uniformity is not subserved. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 67.

Under the Montana constitution the state board of equalization has the power, in adjusting and equalizing taxation between oil pipelines and other properties, i.e., town and city lots, to recognize pipelines as a class in itself, and still not violate the requirement of uniformity. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 67.

Sec. 16.

Relocation of Utilities

The provisions of section 32-1625, relating to the costs of relocation of utility

Writ of Prohibition

District court acted prematurely in issuing writ prohibiting state board of equalization from proceeding further under section 84-605, holding a public hearing and equalizing or increasing the assessed values of farm lands in county, which prevented board from discharging its constitutional duties. *State ex rel. Reid v. District Court*, 134 M 128, 328 P 2d 634, 635.

References

Cited in *Blair v. Potter*, 132 M 176, 315 P 2d 177, 182.

facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 33.

ARTICLE XIII—PUBLIC INDEBTEDNESS

Sec. 1.

Relocation of Utilities

The provisions of section 32-1625, relating to the costs of relocation of utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 34.

Sec. 2.

"Debt or Liability"

Section 2, article IX of the Montana constitution amended the words "debt or liability" as they appear in this section and has effectively confined them to debts or liabilities which must be retired out of ad valorem taxes. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 916.

Laws Not Violating This Provision

Statute amending initiative act provid-

References

Wilson v. State Highway Commission, — M —, 370 P 2d 486, 487.

ing for honorarium for World War II veterans so as to make Korean veterans eligible to receive honorariums was not required to be submitted to the voters under this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 915, 916.

References

Cited in *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 649.

Sec. 6. No city, town, township, school district or high school district shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum (5%) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such city, town, township, school district or high school district shall be void; and each school district and each high school district shall have separate and independent bonding capacities within the limitation of this section; provided, however, that the legislative assembly may extend the limit mentioned in this section, by authorizing municipal corporations to submit the question to a vote of the taxpayers affected thereby, when such increase is necessary to con-

struct a sewerage system or to procure a supply of water for such municipality which shall own and control said water supply and devote the revenues derived therefrom to the payment of the debt.

Compiler's Note

This constitutes sec. 6 of article XIII as amended by act approved March 7, 1957 (Ch. 161, Laws of 1957), adopted at the general election of November 1958, effective under governor's proclamation, December 8, 1958. This amendment in-

serted the words "high school district" each time they appear and inserted the phrase "and each school district and each high school district shall have separate and independent bonding capacities within the limitation of this section."

ARTICLE XV—CORPORATIONS OTHER THAN MUNICIPAL

Sec. 4.

Operation and Effect

A corporation may not deprive a stockholder of the right of cumulative voting by any act on its part. *Sensabaugh v. Polson Plywood Co.*, 135 M 562, 342 P 2d 1064.

Stockholders may contract among themselves with respect to voting their stock

and a contract to refrain from cumulative voting is valid. However, an invalid bylaw, attempting to dispense with cumulative voting, was not enforceable as a contract, even among those stockholders assenting to it. *Sensabaugh v. Polson Plywood Co.*, 135 M 562, 342 P 2d 1064.

Sec. 9.

Operation and Effect

Under the guise of police power the state and municipal subdivisions thereof have the power and the duty to do all things necessary to protect the public in matters of the preservation, among other things of the health and well being of

the community. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 30.

Under police power the state can provide for the destruction of diseased animals even though provision for compensation to the owner has not been made. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 31.

Sec. 13.

Lease of State Lands

The law authorizing the lease of state lands for underground storage of natural

gas does not violate this section. *State ex rel. Hughes v. State Board of Land Commrs.*, 137 M 510, 353 P 2d 331, 336.

Sec. 20.

Fair Trade Act

The Fair Trade Act (sections 85-201 to 85-208) permits price-fixing in violation of this section and is therefore invalid. *Union Carbide & Carbon Corp. v. Skaggs Drug Center, Inc.*, 139 M 15, 359 P 2d 644.

Operation and Effect

The activity proscribed by this section has no relation to police power. *Montana Milk Control Board v. Rehberg*, — M —, 376 P 2d 508, 514.

Price-Fixing

This section is not only aimed at monopolies but also invalidates all price-fixing contracts, even in situations where there is open competition and no danger of monopoly. *Union Carbide & Carbon Corp. v. Skaggs Drug Center, Inc.*, 139 M 15, 359 P 2d 644.

References

Cited in *Professional & Business Men's Life Ins. Co. v. Bankers Life Co.*, 163 F Supp 274, 279.

ARTICLE XVI—COUNTIES—MUNICIPAL CORPORATIONS AND OFFICES

Sec. 5.

References

Husky Hi Power, Inc. v. Schmidt, — M —, 372 P 2d 142, 144.

Sec. 7.

City-County Government

A city-county planning board established without reference to the electors

was in violation of this section. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1025.

ARTICLE XVII—PUBLIC LANDS

Sec. 1.

Leasing for Underground Storage

The law authorizing the lease of state lands for underground storage of natural

gas does not violate this section. *State ex rel. Hughes v. State Board of Land Commrs.*, 137 M 510, 353 P 2d 331, 335.

ARTICLE XIX—MISCELLANEOUS SUBJECTS AND FUTURE AMENDMENTS

Sec. 2.

Operation and Effect

The framers of the constitution were seeking to suppress and restrain the spirit of gambling which is cultivated and stimulated by schemes whereby one is induced to hazard his earnings with the hope of large winnings. The statutes which define and prohibit lotteries must therefore be interpreted with this purpose in mind. *State v. Cox*, 136 M 507, 349 P 2d 104, 106.

Valuable Consideration

Where one is required to make an outlay of money in order to participate in a scheme whereby an award is made by chance, the participant pays valuable consideration for the chance to participate, notwithstanding the fact he may also receive merchandise at the same time that the outlay is made. *State v. Cox*, 136 M 507, 349 P 2d 104. (*State ex rel. Stafford v. Fox-Great Falls Theatre Corp.*, 114 M 52, 132 P 2d 689, distinguished.)

Sec. 9.

Cross-Reference

Explanatory statement of proposed Constitutional amendments to be prepared by attorney general, sec. 37-104.1.

Presentation to Governor

It was a fatal defect for the legislature

to ignore the governor, in neglecting and refusing to present proposed constitutional amendments to the governor in full as passed by the house and senate for the governor's approval or disapproval. *State ex rel. Livingstone v. Murray*, 137 M 557, 354 P 2d 552, 556.

TABLE OF CORRESPONDING CODE SECTIONS

Revised Codes 1921 and 1935 to Revised Codes 1947

This table shows the disposition made of the sections of the Revised Codes of 1921 and the Revised Codes of 1935 since publication of Replacement Volume 1.

1921 & 1935	1947	1921 & 1935	1947
137	Rep. Ch. 80, Sec. 14, L. 1961*	1520	Rep. Ch. 189, Sec. 2, L. 1959
153	Rep. Ch. 147, Sec. 242, L. 1963	1521-1523	Rep. Ch. 213, Sec. 9, L. 1963
179	Rep. Ch. 147, Sec. 242, L. 1963	1524	Rep. Ch. 266, Sec. 82, L. 1963
198.1-198.8	Rep. Ch. 147, Sec. 242, L. 1963	1526	Rep. Ch. 266, Sec. 82, L. 1963
202	Rep. Ch. 129, Sec. 1, L. 1963	1529-1532	Rep. Ch. 266, Sec. 82, L. 1963
204, 205	Rep. Ch. 129, Sec. 1, L. 1963	1534	Rep. Ch. 266, Sec. 82, L. 1963
219	Rep. Ch. 129, Sec. 1, L. 1963	1537	Rep. Ch. 266, Sec. 82, L. 1963
238-241	Rep. Ch. 97, Sec. 32, L. 1961	1539, 1540	Rep. Ch. 266, Sec. 82, L. 1963
249	Rep. Ch. 97, Sec. 32, L. 1961	1542-1544	Rep. Ch. 266, Sec. 82, L. 1963
251-253	Rep. Ch. 80, Sec. 14, L. 1961	1546, 1546.1	Rep. Ch. 266, Sec. 82, L. 1963
254	Rep. Ch. 271, Sec. 33, L. 1963	1576-1579	Rep. Ch. 190, Sec. 1, L. 1959
255-259	Rep. Ch. 80, Sec. 14, L. 1961	1760.1-1760.6	Rep. Ch. 101, Sec. 1, L. 1959
259.2	Rep. Ch. 271, Sec. 33, L. 1963	1925, 1926	Rep. Ch. 89, Sec. 4, L. 1961
259.4	Rep. Ch. 271, Sec. 33, L. 1963	1937	Rep. Ch. 184, Sec. 8, L. 1961
263-266	Rep. Ch. 80, Sec. 14, L. 1961	1939	Rep. Ch. 184, Sec. 8, L. 1961
268, 269	Rep. Ch. 80, Sec. 14, L. 1961	1958	Rep. Ch. 129, Sec. 1 and Ch. 147, Sec. 242, L. 1963
274	Rep. Ch. 80, Sec. 14, L. 1961	1961	Rep. Ch. 129, Sec. 1, L. 1963
295-298	Rep. Ch. 158, Sec. 11, L. 1959	1963	Rep. Ch. 147, Sec. 242, L. 1963
301	Rep. Ch. 147, Sec. 242, L. 1963	1987	Rep. Ch. 147, Sec. 242, L. 1963
303	Rep. Ch. 158, Sec. 11, L. 1959	1989	Rep. Ch. 147, Sec. 242, L. 1963
306	Rep. Ch. 81, Sec. 3, L. 1961	2739, 2740	Rep. Ch. 129, Sec. 1, L. 1963
310-315	Rep. Ch. 271, Sec. 33, L. 1963	2815, 156	Rep. Ch. 147, Sec. 242, L. 1963
317-319	Rep. Ch. 271, Sec. 33, L. 1963	2921	Rep. Ch. 197, Sec. 1, L. 1959
349.65	Rep. Ch. 147, Sec. 242, L. 1963	2963	Rep. Ch. 147, Sec. 242, L. 1963
368	Rep. Ch. 129, Sec. 1, L. 1963	3291	Rep. Ch. 147, Sec. 242, L. 1963
391	Rep. Ch. 264, Sec. 10-102, L. 1963	3357, 3358	Rep. Ch. 32, Sec. 1, L. 1953
437, 438	Rep. Ch. 202, Sec. 3, L. 1959	3359	Rep. Ch. 24, L. 1943; Ch. 32, Sec. 1, L. 1953
440	Rep. Ch. 202, Sec. 3, L. 1959	3360-3373	Rep. Ch. 32, Sec. 1, L. 1953
519-521	Rep. Ch. 80, Sec. 14, L. 1961	3509	Rep. Ch. 188, Sec. 4, L. 1959
812.14	Rep. Ch. 20, Sec. 3, L. 1959	3525	Rep. Ch. 188, Sec. 4, L. 1959
1105-1112	Rep. Ch. 26, Sec. 1, L. 1961	3575.3	Rep. Ch. 147, Sec. 242, L. 1963
1199	Rep. Ch. 79, Sec. 1, L. 1961	3634.1, 3634.2	Rep. Ch. 147, Sec. 242, L. 1963
1212	Rep. Ch. 75, Sec. 1, L. 1961	3731, 3732	Rep. Ch. 38, Sec. 2, L. 1963
1414	Rep. Ch. 266, Sec. 82, L. 1963	3736	Rep. Ch. 38, Sec. 2, L. 1963
1416, 1417	Rep. Ch. 266, Sec. 82, L. 1963	3784	Rep. Ch. 129, Sec. 1 and Ch. 212, Sec. 3, L. 1963
1429	Rep. Ch. 198, Sec. 2 and Ch. 213, Sec. 9, L. 1963	3786-3788	Rep. Ch. 129, Sec. 1, L. 1963
1444	Rep. Ch. 213, Sec. 9, L. 1963	4026-4050	Rep. Ch. 251, Sec. 28, L. 1961
1445	Rep. Ch. 112, Sec. 15, L. 1963	4053	Rep. Ch. 251, Sec. 28, L. 1961
1446	Rep. Ch. 112, Sec. 15 and Ch. 266, Sec. 82, L. 1963	4056-4078	Rep. Ch. 250, Sec. 24, L. 1963
1447-1450	Rep. Ch. 112, Sec. 15, L. 1963	4079-4127	Rep. Ch. 264, Sec. 10-102, L. 1963
1451, 1452	Rep. Ch. 112, Sec. 15 and Ch. 213, Sec. 9, L. 1963	4134-4138	Rep. Ch. 264, Sec. 10-102, L. 1963
1453-1455	Rep. Ch. 112, Sec. 15, L. 1963	4562.1-4562.3	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
1486, 1487	Rep. Ch. 266, Sec. 82, L. 1963		
1489-1492	Rep. Ch. 266, Sec. 82, L. 1963		
1498-1500	Rep. Ch. 266, Sec. 82, L. 1963		
1512-1515	Rep. Ch. 266, Sec. 82, L. 1963		
1518	Rep. Ch. 266, Sec. 82, L. 1963		

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1921 & 1935	1947	1921 & 1935	1947
4594	Rep. Ch. 136, Sec. 1, L. 1961	8495-8597	Rep. Ch. 264, Sec. 10-102, L. 1963
4813.2	Rep. Ch. 264, Sec. 10-102, L. 1963	8607-8611	Rep. Ch. 264, Sec. 10-102, L. 1963
5148.1	Unconstitutional, 134 M 355, 332 P 2d 501	8674-8680	Rep. Ch. 264, Sec. 10-102, L. 1963
5158.2	Rep. Ch. 147, Sec. 242, L. 1963	8685	Rep. Ch. 200, Sec. 7, L. 1963
5668.22, 5668.23	Rep. Ch. 147, Sec. 242, L. 1963	8699, 8700	Rep. Ch. 264, Sec. 10-102, L. 1963
5668.28	Rep. Ch. 147, Sec. 242, L. 1963	8956, 8957	Rep. Ch. 147, Sec. 242, L. 1963
5696	Rep. Ch. 232, Sec. 12, L. 1963	8960	Rep. Ch. 147, Sec. 242, L. 1963
5707	Rep. Ch. 232, Sec. 12, L. 1963	9010	Rep. Ch. 13, Sec. 84, L. 1961
5711, 5712	Rep. Ch. 232, Sec. 12, L. 1963	9065	Rep. Ch. 7, Sec. 1, L. 1963
5715	Rep. Ch. 232, Sec. 12, L. 1963	9067	Rep. Ch. 13, Sec. 84, L. 1961
5731, 5732	Rep. Ch. 169, Sec. 4, L. 1963	9071	Rep. Ch. 13, Sec. 84, L. 1961
5856-5866	Rep. Ch. 199, Sec. 1, L. 1961	9077, 9078	Rep. Ch. 13, Sec. 84, L. 1961
5954	Rep. Ch. 264, Sec. 10-102, L. 1963	9080	Rep. Ch. 13, Sec. 84, L. 1961
5956	Rep. Ch. 264, Sec. 10-102, L. 1963	9082-9084	Rep. Ch. 13, Sec. 84, L. 1961
6014.63	Rep. Ch. 129, Sec. 1, L. 1963	9087, 9088	Rep. Ch. 13, Sec. 84, L. 1961
6014.91, 6014.92	Rep. Ch. 264, Sec. 10-102, L. 1963	9090	Rep. Ch. 13, Sec. 84, L. 1961
6014.100, 6014.101	Rep. Ch. 264, Sec. 10-102, L. 1963	9097	Rep. Ch. 13, Sec. 84, L. 1961
6014.127	Rep. Ch. 264, Sec. 10-102, L. 1963	9105	Rep. Ch. 6, Sec. 1, L. 1963
6109.12-6109.39	Rep. Ch. 236, Sec. 30, L. 1963	9107	Rep. Ch. 13, Sec. 84, L. 1961
6155	Rep. Ch. 43, Sec. 4, L. 1959	9108	Rep. Ch. 5, Sec. 1 and Ch. 189, Sec. 2, L. 1963
6535	Rep. Ch. 264, Sec. 10-102, L. 1963	9110, 9111	Rep. Ch. 13, Sec. 84, L. 1961
6537-6539	Rep. Ch. 264, Sec. 10-102, L. 1963	9113, 9114	Rep. Ch. 189, Sec. 2, L. 1963
6721	Rep. Ch. 213, Sec. 3, L. 1959	9117-9119	Rep. Ch. 13, Sec. 84, L. 1961
6734	Rep. Ch. 213, Sec. 3, L. 1959	9121, 9122	Rep. Ch. 13, Sec. 84, L. 1961
6736-6739	Rep. Ch. 213, Sec. 3, L. 1959	9123	Rep. Ch. 189, Sec. 2, L. 1963
6878-6880	Rep. Ch. 264, Sec. 10-102, L. 1963	9125-9138	Rep. Ch. 13, Sec. 84, L. 1961
7591, 7592	Rep. Ch. 264, Sec. 10-102, L. 1963	9140, 9141	Rep. Ch. 13, Sec. 84, L. 1961
7594-7597	Rep. Ch. 264, Sec. 10-102, L. 1963	9144	Rep. Ch. 13, Sec. 84, L. 1961
7618	Rep. Ch. 264, Sec. 10-102, L. 1963	9146-9148	Rep. Ch. 13, Sec. 84, L. 1961
7622-7624	Rep. Ch. 264, Sec. 10-102, L. 1963	9151-9162	Rep. Ch. 13, Sec. 84, L. 1961
7633	Rep. Ch. 264, Sec. 10-102, L. 1963	9164-9166	Rep. Ch. 13, Sec. 84, L. 1961
7828-7834	Rep. Ch. 264, Sec. 10-102, L. 1963	9169-9171	Rep. Ch. 13, Sec. 84, L. 1961
7871-7873	Rep. Ch. 264, Sec. 10-102, L. 1963	9174-9176	Rep. Ch. 13, Sec. 84, L. 1961
8210-8218	Rep. Ch. 264, Sec. 10-102, L. 1963	9178-9187	Rep. Ch. 13, Sec. 84, L. 1961
8224	Rep. Ch. 264, Sec. 10-102, L. 1963	9189	Rep. Ch. 13, Sec. 84, L. 1961
8275-8285	Rep. Ch. 264, Sec. 10-102, L. 1963	9191	Rep. Ch. 13, Sec. 84, L. 1961
8289, 8290	Rep. Ch. 264, Sec. 10-102, L. 1963	9239	Rep. Ch. 13, Sec. 84, L. 1961
8290.1	Rep. Ch. 264, Sec. 10-102, L. 1963	9292	Rep. Ch. 264, Sec. 10-102, L. 1963
8295	Rep. Ch. 264, Sec. 10-102, L. 1963	9313	Rep. Ch. 13, Sec. 84, L. 1961
8298	Rep. Ch. 264, Sec. 10-102, L. 1963	9315-9317	Rep. Ch. 13, Sec. 84, L. 1961
8306-8317	Rep. Ch. 264, Sec. 10-102, L. 1963	9320-9322	Rep. Ch. 13, Sec. 84, L. 1961
8381	Rep. Ch. 264, Sec. 10-102, L. 1963	9324	Rep. Ch. 13, Sec. 84, L. 1961
8393-8395	Rep. Ch. 32, Sec. 1, L. 1953	9326-9328	Rep. Ch. 13, Sec. 84, L. 1961
8396-8400	Rep. Ch. 264, Sec. 10-102, L. 1963	9330, 9331	Rep. Ch. 13, Sec. 84, L. 1961
8401-8493	Rep. Ch. 264, Sec. 10-102, L. 1963	9345-9347	Rep. Ch. 13, Sec. 84, L. 1961
		9359-9361	Rep. Ch. 13, Sec. 84, L. 1961
		9365	Rep. Ch. 13, Sec. 84, L. 1961
		9367	Rep. Ch. 13, Sec. 84, L. 1961
		9374-9376	Rep. Ch. 13, Sec. 84, L. 1961
		9378-9380	Rep. Ch. 13, Sec. 84, L. 1961
		9383-9385	Rep. Ch. 13, Sec. 84, L. 1961
		9387	Rep. Ch. 13, Sec. 84, L. 1961
		9399	Rep. Ch. 13, Sec. 84, L. 1961
		9403	Rep. Ch. 13, Sec. 84, L. 1961
		9405	Rep. Ch. 13, Sec. 84, L. 1961
		9482, 9483	Rep. Ch. 189, Sec. 2, L. 1963
		9485	Rep. Ch. 189, Sec. 2, L. 1963
		9735-9738	Rep. Ch. 13, Sec. 84, L. 1961
		9770-9772	Rep. Ch. 13, Sec. 84, L. 1961
		9774	Rep. Ch. 13, Sec. 84, L. 1961

TABLE OF CORRESPONDING CODE SECTIONS

1921 & 1935	1947	1921 & 1935	1947
9778-9781	Rep. Ch. 13, Sec. 84, L. 1961	12460	Rep. Ch. 266, Sec. 82, L. 1963
9784	Rep. Ch. 13, Sec. 84, L. 1961	12463	Rep. Ch. 147, Sec. 242 and Ch. 266, Sec. 82, L. 1963
9792	Rep. Ch. 13, Sec. 84, L. 1961	12465	Rep. Ch. 266, Sec. 82, L. 1963
9820	Rep. Ch. 13, Sec. 84, L. 1961	12488, 12489	Rep. Ch. 266, Sec. 82, L. 1963
10620	Rep. Ch. 13, Sec. 84, L. 1961	12491-12493	Rep. Ch. 266, Sec. 82, L. 1963
10622	Rep. Ch. 154, Sec. 1, L. 1959	12495	Rep. Ch. 266, Sec. 82, L. 1963
10643-10658	Rep. Ch. 13, Sec. 84, L. 1961	12497	Rep. Ch. 266, Sec. 82, L. 1963
10686-10692	Rep. Ch. 13, Sec. 84, L. 1961	12500-12502	Rep. Ch. 266, Sec. 82, L. 1963
10925	94-3920	12513-12515	Rep. Ch. 266, Sec. 82, L. 1963
11473	Rep. Ch. 174, Sec. 3, L. 1963	12519	Rep. Ch. 266, Sec. 82, L. 1963
11567	Rep. Ch. 52, Sec. 1, L. 1959	12522	Rep. Ch. 266, Sec. 82, L. 1963
11847	Rep. Ch. 172, Sec. 3, L. 1961	12524-12528	Rep. Ch. 266, Sec. 82, L. 1963
12439	Rep. Ch. 266, Sec. 82, L. 1963	12530-12532	Rep. Ch. 266, Sec. 82, L. 1963
12443-12445	Rep. Ch. 266, Sec. 82, L. 1963	12534	Rep. Ch. 266, Sec. 82, L. 1963
12447.1-12447.10	Rep. Ch. 15, Sec. 1, L. 1959	12546	Rep. Ch. 266, Sec. 82, L. 1963
12450	Rep. Ch. 15, Sec. 1, L. 1959		
12451-12453	Rep. Ch. 266, Sec. 82, L. 1963		

TABLE OF CORRESPONDING CODE SECTIONS

Revised Codes 1907 to Revised Codes 1947

This table shows the disposition made of the sections of the Revised Codes of 1907 since publication of Replacement Volume 1.

1907	1947	1907	1947
158	Rep. Ch. 80, Sec. 14, L. 1961	4069	Rep. Ch. 43, Sec. 4, L. 1959
172	Rep. Ch. 147, Sec. 242, L. 1963	4303	Rep. Ch. 264, Sec. 10-102, L. 1963
180	Rep. Ch. 147, Sec. 242, L. 1963	4305-4307	Rep. Ch. 264, Sec. 10-102, L. 1963
196	Rep. Ch. 129, Sec. 1, L. 1963	4368	Rep. Ch. 129, Sec. 1 and Ch. 212, Sec. 3, L. 1963
214	Rep. Ch. 129, Sec. 1, L. 1963	4479	Rep. Ch. 213, Sec. 3, L. 1959
232-235	Rep. Ch. 97, Sec. 32, L. 1961	4492	Rep. Ch. 213, Sec. 3, L. 1959
243	Rep. Ch. 97, Sec. 32, L. 1961	4494-4497	Rep. Ch. 213, Sec. 3, L. 1959
245-247	Rep. Ch. 80, Sec. 14, L. 1961	4631-4633	Rep. Ch. 264, Sec. 10-102, L. 1963
248	Rep. Ch. 271, Sec. 33, L. 1963	5089, 5090	Rep. Ch. 264, Sec. 10-102, L. 1963
249-253	Rep. Ch. 80, Sec. 14, L. 1961	5092-5094a	Rep. Ch. 264, Sec. 10-102, L. 1963
257-260	Rep. Ch. 80, Sec. 14, L. 1961	5115	Rep. Ch. 264, Sec. 10-102, L. 1963
262, 263	Rep. Ch. 80, Sec. 14, L. 1961	5119-5121	Rep. Ch. 264, Sec. 10-102, L. 1963
265-267	Rep. Ch. 271, Sec. 33, L. 1963	5130	Rep. Ch. 264, Sec. 10-102, L. 1963
297	Rep. Ch. 129, Sec. 1, L. 1963	5314-5320	Rep. Ch. 264, Sec. 10-102, L. 1963
321	Rep. Ch. 264, Sec. 10-102, L. 1963	5357-5359	Rep. Ch. 264, Sec. 10-102, L. 1963
443-445	Rep. Ch. 80, Sec. 14, L. 1961	5695-5703	Rep. Ch. 264, Sec. 10-102, L. 1963
946	Rep. Ch. 26, Sec. 1, L. 1961	5709	Rep. Ch. 264, Sec. 10-102, L. 1963
948-951	Rep. Ch. 26, Sec. 1, L. 1961	5777	Rep. Ch. 264, Sec. 10-102, L. 1963
1113	Rep. Ch. 266, Sec. 82, L. 1963	5780	Rep. Ch. 264, Sec. 10-102, L. 1963
1132	Rep. Ch. 198, Sec. 2 and Ch. 213, Sec. 9, L. 1963	5788-5799	Rep. Ch. 264, Sec. 10-102, L. 1963
1147	Rep. Ch. 213, Sec. 9, L. 1963	5803	Rep. Ch. 264, Sec. 10-102, L. 1963
1260, 1261	Rep. Ch. 266, Sec. 82, L. 1963	5813-5815	Rep. Ch. 32, Sec. 1, L. 1953
1265	Rep. Ch. 266, Sec. 82, L. 1963	5837-5934	Rep. Ch. 264, Sec. 10-102, L. 1963
1267	Rep. Ch. 266, Sec. 82, L. 1963	5936-6037a	Rep. Ch. 264, Sec. 10-102, L. 1963
1270	Rep. Ch. 266, Sec. 82, L. 1963	6056-6062	Rep. Ch. 264, Sec. 10-102, L. 1963
1273	Rep. Ch. 266, Sec. 82, L. 1963	6067	Rep. Ch. 200, Sec. 7, L. 1963
1281	Rep. Ch. 266, Sec. 82, L. 1963	6081, 6082	Rep. Ch. 264, Sec. 10-102, L. 1963
1284-1287	Rep. Ch. 266, Sec. 82, L. 1963	6131-6135	Rep. Ch. 264, Sec. 10-102, L. 1963
1289	Rep. Ch. 266, Sec. 82, L. 1963	6427	Rep. Ch. 13, Sec. 84, L. 1961
1292	Rep. Ch. 266, Sec. 82, L. 1963	6475	Rep. Ch. 7, Sec. 1, L. 1963
1294	Rep. Ch. 266, Sec. 82, L. 1963	6477	Rep. Ch. 13, Sec. 84, L. 1961
1299-1301	Rep. Ch. 266, Sec. 82, L. 1963	6481	Rep. Ch. 13, Sec. 84, L. 1961
1305	Rep. Ch. 266, Sec. 82, L. 1963	6487, 6488	Rep. Ch. 13, Sec. 84, L. 1961
1306	Rep. Ch. 190, Sec. 1, L. 1959	6490-6492	Rep. Ch. 13, Sec. 84, L. 1961
1308-1310	Rep. Ch. 190, Sec. 1, L. 1959	6495-6496	Rep. Ch. 13, Sec. 84, L. 1961
2246	Rep. Ch. 129, Sec. 1 and Ch. 147, Sec. 242, L. 1963		
2249	Rep. Ch. 129, Sec. 1, L. 1963		
2251	Rep. Ch. 147, Sec. 242, L. 1963		
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VOLUME 1

Part 2

1963 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 1 (PART 2) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 1
(PART 2) THROUGH VOLUME 377, PACIFIC
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CHAPTER 2—STATE AERONAUTICS COMMISSION

1-204. General powers and duties of commission.

Expert Witness.

An officer and employee of the state aeronautical commission may not be required to testify as an expert witness in

any suit, action, or proceeding involving any aircraft. *McCutcheon v. Larsen*, 134 M 511, 333 P 2d 1013, 1015, 74 ALR 2d 622.

CHAPTER 5—MISCELLANEOUS

Section 1-501. Receipt and disbursement of moneys.

1-501. Receipt and disbursement of moneys. All costs and expenses of administering this act, including the salaries of employees and assistants provided for in section 1-203, the expenses of members of the commission, and all other disbursements necessary to carry out the purposes of this act, shall be paid out of the following revenues to-wit: All gifts and all legislative appropriations to the commission; all moneys received from any branch or department of the federal government, or from other sources, for the purposes mentioned in this act or for the furtherance of aeronautics generally in this state. All such moneys shall be deposited in the state treasury to the credit of the commission.

There shall be deposited in the earmarked revenue fund to the credit of the commission the proceeds of one cent (1¢) per gallon out of the amount per gallon of gasoline license tax now or hereafter imposed by the laws of Montana upon purchases of gasoline used for the operation of aircraft.

No part of said one cent (1¢) per gallon of gasoline license tax imposed by the laws of Montana on gasoline purchased and used for the operation of aeroplanes or aircraft, shall be subject to refund under the provisions of section 84-1818, as amended, it being the intent of this section to reduce by one cent (1¢) per gallon of the amount of gasoline license tax which may be refunded on purchases of gasoline used in the operation of aircraft, and to leave otherwise unchanged the provisions of said section 84-1818.

History: En. Sec. 20, Ch. 152, L. 1945; amd. Sec. 1, Ch. 120, L. 1949; amd. Sec. 220, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the first two paragraphs for four former paragraphs, for text of which see parent volume.

1-502. Aeronautics functions governmental—no liability for torts.

Airport Manager as Agent of Municipality

Where city and county leased hangar facilities and designated one of two lessees as airport manager, and the lessees were obligated to maintain only the portion of the airport leased to them, the city and county having retained control over the unleased portions, the airport manager was the agent of the city and county and was not liable for an accident occurring on unleased portion. *Barovich v. City of Miles City*, 135 M 394, 340 P 2d 819.

operation of an airport. *Holland v. Western Airlines, Inc.*, 154 F Supp 457, 459; *Barovich v. City of Miles City*, 135 M 394, 340 P 2d 819.

Liability Insurance

The fact that the city had obtained a policy of liability insurance did not in itself result in any waiver of sovereign immunity from liability for personal injuries sustained by plaintiff when she slipped and fell on floor of municipal airport owned by the city and leased to defendant airline. *Holland v. Western Airlines, Inc.*, 154 F Supp 457, 461.

Immunity from Suit

A municipality is immune from suit for injuries resulting from the maintenance or

CHAPTER 6—UNIFORM STATE LAW FOR AERONAUTICS

Section 1-603. Lawfulness of flight—landings—recovery of damages.

1-603. (2736.7) Lawfulness of flight—landings—recovery of damages.

Flight in aircraft over the lands and waters of this state is lawful, unless at such a low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water, is put by the owner, or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water, or in violation of the air commerce regulations which have been, or may hereafter be, promulgated by the department of commerce of the United States. No person shall operate an aircraft, as pilot thereof, either in the air or on the ground in a careless or reckless manner so as to endanger the life or property of others, including the aircraft being operated and passengers carried therein. The wilful and malicious use of aircraft in stunting or diving over livestock in a manner calculated to frighten or stampede them, shall be deemed an unlawful use thereof, and actual and punitive damages, in addition to the penalties, provided by this act, may be recovered in an action for damages caused therefrom.

The landing of an aircraft on the lands or waters of another, without his consent, is unlawful, except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft or the pilot shall be liable for actual damage caused by such forced landing.

History: En. Sec. 7, Ch. 17, L. 1929; amd. Sec. 1, Ch. 109, L. 1939; amd. Sec. 1, Ch. 16, L. 1949; amd. Sec. 1, Ch. 102, L. 1963.

Amendment

The 1963 amendment inserted "as pilot thereof, either in the air or on the ground" near the beginning of the second sentence of the first paragraph.

CHAPTER 8—ESTABLISHMENT OF AIRPORTS BY COUNTIES AND CITIES—MUNICIPAL AIRPORTS ACT

- Section 1-801. Counties, cities and towns may acquire land for, and establish airports and landing fields.
- 1-802. Land when deemed acquired for public use—exercise power of eminent domain.
- 1-803. Creation of board to govern airport—fees—fund for maintenance—rules and regulations.

1-801. (5668.35) Counties, cities and towns may acquire land for, and establish airports and landing fields. Counties, cities and towns in this state, may either individually or by the joint action of a county and one (1) or more of the cities and towns within its border acquire by gift, deed, purchase or condemnation, land for airport or landing field purposes and thereon establish, construct, own, control, lease, equip, improve, operate, and regulate airports or landing fields for the use of airplanes and other aircraft, and may use for such purpose or purposes any property suitable therefor that now or may at any time hereafter be acquired, owned or controlled by such county, city or town.

In addition, a county, city or town may do the acts authorized by this section by acting jointly with one or more counties, with one or more cities, with one or more towns or any combination of such counties, cities or towns. Such airport need not be located within the limits of each subdivision participating in the joint venture, in whole or in part.

History: En. Sec. 1, Ch. 108, L. 1929; **Amendment**
amd. Sec. 1, Ch. 54, L. 1941; amd. Sec. 1, The 1961 amendment added the second
Ch. 88, L. 1961. paragraph.

1-802. (5668.36) Land when deemed acquired for public use—exercise power of eminent domain. Any lands acquired, owned, controlled or occupied by any county, city or town, individually or pursuant to joint action as herein provided for the purposes enumerated in section 1-801, shall and are hereby declared to be acquired, owned, controlled and occupied for a public use, and as a matter of public necessity, and such counties, cities and towns, whether acting individually or jointly shall have the right to acquire property for such purposes under the power of eminent domain as and for a public use or necessity.

History: En. Sec. 2, Ch. 108, L. 1929; **Amendment**
amd. Sec. 2, Ch. 54, L. 1941; amd. Sec. 2, The 1961 amendment after the words
Ch. 88, L. 1961. "county, city or town" inserted the words
"individually or" and deleted the words
"or by a county and city or cities, or
town or towns."

1-803. (5668.37) Creation of board to govern airport—fees—fund for maintenance—rules and regulations. The county, city or town, acting individually or acting jointly as herein authorized by section 1-801, having established an airport or landing field and acquired property for such purpose, may construct, improve, equip, maintain, and operate the same, and for that purpose may create a board or body from the inhabitants of such county, city or town, or such joint subdivisions of the state for the purpose of conferring upon them and may confer upon them the jurisdiction for the improvement, equipment, maintenance and operation of such

airport or landing field. The board of county commissioners, the city or town council, as the case may be, or the board of county commissioners and the council or councils under a joint venture may adopt rules and establish fees or charges for the use of such airport or landing field, or may authorize such board or body to do so, subject, however, to the approval of the appointing power before the same shall take effect. All expenses of such construction, improvement, equipment, maintenance and operation shall be a charge against such county, city or town, or, when a county, city or town acts jointly under the authority herein given, such charges shall be against the joint subdivisions of the state, and shall be apportioned according to benefits to accrue, the proportion to be paid by each to be fixed in advance by joint resolution of the governing bodies.

For the purpose of meeting the charges hereinbefore mentioned when the airport or landing field is such joint venture, a joint fund shall be created and maintained into which each of the political subdivisions interested shall deposit its proportionate share in accordance with the predetermination of the board of county commissioners and council, or councils, affected.

All disbursements from such fund shall be made by order of such joint board or body, if one be created as hereinabove authorized, otherwise under such rules and regulations as the joint control by the commissioners and council or councils may adopt.

History: En. Sec. 3, Ch. 108, L. 1929; amd. Sec. 3, Ch. 54, L. 1941; amd. Sec. 3, Ch. 88, L. 1961.

Amendment

The 1961 amendment substituted the words "acting individually or" for "or the county and any city or cities, town or towns" near the beginning of the section;

inserted "by section 1-801" after "herein authorized" in the first sentence of the first paragraph; substituted "county, city or town" for "county and city or cities, town or towns" the second place that phrase appears in the third sentence of the first paragraph; and deleted "two (2)" before "governing bodies" at the end of the first paragraph.

1-812. Operation and use privileges.

Airport Manager as Agent

Where in a lease of hangar facilities at a city and county airport, the parties named one of the lessees as airport manager, it was apparent that the parties had

this section in mind and the use of the word "manager" implied that he was to be the agent of the airport commission. *Barovich v. City of Miles City*, 135 M 394, 340 P 2d 819.

1-821. Joint operations.

References

Cited in *Barovich v. City of Miles City*, 135 M 394, 340 P 2d 819.

1-822. Public purpose, county and municipal purpose.

Immunity from Suit

A municipality is immune from suit for injuries resulting from the maintenance or operation of an airport. *Holland v. Western Airlines, Inc.*, 154 F Supp 457, 459; *Barovich v. City of Miles City*, 135 M 394, 340 P 2d 819.

Liability Insurance

The fact that the city had obtained a policy of liability insurance did not in itself result in any waiver of sovereign immunity from liability for personal injuries sustained by plaintiff when she slipped and fell on floor of municipal airport owned by the city and leased to defendant airline. *Holland v. Western Airlines, Inc.*, 154 F Supp 457, 461.

TITLE 2—AGENCY

CHAPTER 1—DEFINITION OF AGENCY—AUTHORITY OF AGENTS

2-101. (7928) **Agency defined.**

References

Hamilton v. Lion Head Ski Lift, Inc.,
139 M 335, 363 P 2d 716, 719.

2-104. (7931) **Agency, actual or ostensible.**

References

Hamilton v. Lion Head Ski Lift, Inc.,
139 M 335, 363 P 2d 716, 718.

2-106. (7933) **Ostensible agency.**

Acquiescence in Agency

Where a hotel company had acted as a ski lift company's agent in managing the latter's business, and where the hotel company's principal stockholder had later taken possession of and controlled the ski lift company's office and principal place of business for two years, the principal stockholder was the agent of the ski lift company in negotiating an employment contract, and this was further confirmed when the stockholder engaged counsel to defend the ski lift company in the instant litigation. Hamilton v. Lion Head

Ski Lift, Inc., 139 M 335, 363 P 2d 716, 719.

Acts and Statements Establishing Agency

Where a husband signed a letter employing an attorney and where his wife conferred with the attorney several times and approved his actions with the husband's knowledge and without his expressed disapproval, and where the husband claimed the benefits of the attorney's actions, the wife was the ostensible agent of the husband. Purcell v. Gibbs, 133 M 481, 326 P 2d 679.

2-114. (7937) **Creation of agency.**

References

Hamilton v. Lion Head Ski Lift, Inc.,
139 M 335, 363 P 2d 716, 718.

2-118. (7941) **Ratification of part of a transaction.**

Operation and Effect

Where a landowner claimed the benefit of an attorney's action in clearing title by paying part of a tax claim as part of a settlement, the landowner ratified other

stipulations entered into by the attorney as a part of the same settlement and embodied in the same decree. Purcell v. Gibbs, 133 M 481, 326 P 2d 679.

2-122. (7945) **Measure of agent's authority.**

Conduct of Business

Employee of used car dealer who had been left on the sales lot with the authority to show, demonstrate, quote prices and make trade-in deals, was clothed with sufficient power to conduct the business,

in the absence of his employer, and was agent of the employer in dealing with the public and promoting sale of used cars on the sales lot of his employer. White v. Sorenson, — M —, 377 P 2d 364, 366.

2-123. (7946) **Actual authority defined.**

References

Cited in White v. Sorenson, — M —,
377 P 2d 364, 366.

2-124. (7447) Ostensible authority defined.**Permissive Use of Vehicle by Employee**

The mere permissive use by a truck driver of his employer's truck for personal purposes did not make the owner of the truck liable for the driver's negligence under the doctrine of ostensible

authority. *Searle v. Great Northern Ry. Co.*, 189 F Supp 423, 428.

References

Cited in *White v. Sorenson*, — M —, 377 P 2d 364, 366.

CHAPTER 2—MUTUAL OBLIGATIONS BETWEEN PRINCIPALS, AGENTS AND THIRD PERSONS

2-205. (7961) For acts done under a mere ostensible authority.**Permissive Use of Vehicle by Employee**

The mere permissive use by a truck driver of his employer's truck for personal purposes did not make the owner

of the truck liable for the driver's negligence under the doctrine of ostensible authority. *Searle v. Great Northern Ry. Co.*, 189 F Supp 423, 428.

2-206. (7962) When exclusive credit is given to agent.**Mechanic's Lien**

Even assuming that a contractor making real estate improvements was acting as the agent of the property owner in purchasing material for the improvement, this section does not apply so as to re-

quire any notice from the materialman to the property owner, other than that required by the mechanic's lien law, to perfect a materialman's lien. *Monarch Lumber Co. v. Haggard*, 139 M 105, 360 P 2d 794.

2-212. (7968) Agent's responsibility to third persons.**Operation and Effect**

Where seller at auction sale required assurances from principal before it would accept the agent's drafts on principal in payment for cattle purchased, the seller could not hold the agent personally liable

on the contract even though it permitted the agent to bid in at the auction without disclosing his principal. *Yellowstone Livestock Comm. v. Dupuis*, 133 M 454, 325 P 2d 691.

TITLE 3—AGRICULTURE, HORTICULTURE AND DAIRYING

- Chapter 1. Department and commissioner of agriculture—creation and general powers, 3-103, 3-107.
2. Grain standards—storage and inspection—regulation of grain warehousemen, 3-201, 3-202, 3-226 to 3-228, 3-233.
 4. Farm storage of grain as basis for farm credit—inspection and certification, 3-408, 3-420.
 5. Protein testing of grain, 3-510.
 6. Farm storage public warehousemen, 3-602.
 7. Bean warehousemen, 3-704.
 8. Agricultural seeds, 3-802, 3-816 to 3-819.
 9. Sealers of grain, 3-904.
 11. Horticulture—control of fruit pests and diseases, 3-1103.
 12. Nurseries and nurserymen—license and regulation, 3-1212.
 14. Standard grades and brands for Montana farm products, 3-1404.
 15. Miscellaneous powers and duties of department of agriculture, 3-1510 to 3-1515.
 17. Commercial fertilizer—regulation of sale, 3-1709, 3-1714 to 3-1717, 3-1723, 3-1724.
 18. Hay dealers—bond and license, Repealed—Section 1, Chapter 81, Laws of 1959.
 19. Mustard seed—grade requirements—purchaser's bond and license, 3-1906, 3-1910.
 20. Commercial feeds—regulation, 3-2012 to 3-2024.
 22. Poultry improvement, 3-2201 to 3-2205, 3-2207, 3-2209, 3-2211, 3-2212.
 23. Eggs and egg dealers—license, 3-2302, 3-2315.
 24. Dairies and dairy products—regulation of production and sale, 3-2407, 3-2476.
 25. Montana quality label—use on inspected agricultural and food products, 3-2503.
 27. Control of noxious rodent pests, 3-2704.
 28. Rural rehabilitation, 3-2803.

CHAPTER 1—DEPARTMENT AND COMMISSIONER OF AGRICULTURE— CREATION AND GENERAL POWERS

- Section 3-103. Bond, salary, and office of commissioner.
3-107. Powers and duties of department.

3-103. (3557) Bond, salary, and office of commissioner. Before entering upon the duties of his office, the commissioner of agriculture shall take and subscribe the constitutional oath of office, and shall give a surety company bond in the sum of seven thousand dollars (\$7,000.00), conditioned for the faithful performance of his duties, the cost of said bond to be paid by the state. The commissioner shall receive an annual salary of not more than ten thousand dollars (\$10,000.00), payable in the same manner as the salaries of other state officers, and shall be allowed such expenses as may be actually and necessarily incurred in the performance of his duties. He shall maintain his office at the state capitol.

History: En. Sec. 3, Ch. 216, L. 1921;
re-en. Sec. 3557, R. C. M. 1921; amd. Sec.
1, Ch. 110, L. 1953; amd. Sec. 1, Ch. 225,
L. 1963.

Amendment

The 1963 amendment substituted the provision for a maximum salary of \$10,000 for a provision fixing the salary at \$7,000.

3-107. (3561) Powers and duties of department. The department of agriculture shall have power and it shall be its duty:

1 to 13. * * * [Subdivisions 1 to 13, same as parent volume.]

14. To contract in respect to any matter within the scope of its authority.

History: En. Sec. 7, Ch. 216, L. 1921; re-en. Sec. 3561, R. C. M. 1921; amd. Sec. 13, Ch. 80, L. 1961.

Amendment

The 1961 amendment deleted the words "labor, and industry" in the name of the department and in subd. 14 after the word "contract" deleted the words "with the approval of the state board of examiners."

Repealing Clauses

Section 14 of Ch. 80, Laws 1961 read "Sections 82-1122, 82-1123, 82-1124, 82-1126, 82-1127, 82-1128, 82-1129, 82-1130, 82-1140, 82-1141, 82-1142, 82-1143, 82-1145, 82-1146, 82-1148, 59-702, 59-703, 59-704, 77-1003 and 82-2205, Revised Codes of Montana, 1947 are repealed."

Section 15 of Ch. 80, Laws 1961 repealed all acts or parts of acts in conflict therewith.

CHAPTER 2—GRAIN STANDARDS—STORAGE AND INSPECTION—REGULATION OF GRAIN WAREHOUSEMEN

Section 3-201. Definitions.

3-202. Fees to be paid to state sealer of weights and measures.

3-226. Possession by warehouseman considered bailment, when—prior right of warehouse receipt holder to grain.

3-227. Annual report of warehouseman, track buyer and grain dealer—special reports—penalty for failure to report.

3-228. Bond—license and fees of warehouseman, track buyer, grain dealer and others—penalty for operating without a license.

3-233. Fees—disposition.

3-201. (3574) Definitions. Whenever the word "grain" is mentioned in this act, it shall be construed to include flax. The term "public warehouse" includes any elevator, mill, warehouse, or structure in which grain is received from the public for storage, milling, shipment or handling. The term "public warehouseman" shall be held to mean and include every person, association, firm and corporation owning, controlling, or operating any public warehouse in which grain is stored or handled in such a manner that the grain of various owners is mixed together, and the identity of the different lots or parcels is not preserved. The term "grain dealer" shall be held to mean and include every person, firm, association and corporation owning, controlling, or operating a truck, tractor-trailer unit, or warehouse, other than a public warehouse, and engaged in the business of buying grain for shipment or milling. The term "track buyer" shall mean and include every person, firm, association, and corporation who engages in the business of buying grain for shipment or milling, and who does not own, control, or operate a warehouse or public warehouse. The terms "agent," "broker," and "commission man" shall mean and include every person, association, firm and corporation who engages in the business of negotiating sales or contracts for grain or of making sales or purchases for a commission.

History: En. Sec. 20, Ch. 216, L. 1921; re-en. Sec. 3574, R. C. M. 1921; amd. Sec. 1, Ch. 41, L. 1923; amd. Sec. 1, Ch. 154, L. 1929; amd. Sec. 1, Ch. 35, L. 1933; amd. Sec. 1, Ch. 224, L. 1961.

Amendment

The 1961 amendment inserted the words "truck, tractor-trailer unit, or" in the sentence defining "grain dealer."

3-202. (3575.2) Fees to be paid to state sealer of weights and measures. It shall be the duty of each person, firm, co-partnership, or corporation owning or in possession of a scale or scales to pay to the state sealer of weights and measures or his deputies at the time of each inspection of

such scale or scales, the following inspection fees: For each railroad track scale the sum of fifteen (\$15.00) dollars; grain shipping hopper scale with a capacity of forty thousand (40,000) pounds or over, twenty-five (\$25.00) dollars; automatic or hopper shipping scale up to and including ten (10) ton capacity, eight (\$8.00) dollars; wagon scale, truck scale, coal scale, dump scale, beet scale, and stock scale, up to and including ten (10) ton capacity, ten (\$10.00) dollars, over ten (10) ton up to and including twenty (20) ton capacity, twelve (\$12.00) dollars, two-section scale with a capacity over twenty (20) ton, twenty (\$20.00) dollars; three (3) or more section twenty (20) ton and over capacity, twenty-five (\$25.00) dollars; for each dormant platform scale up to thirty-five hundred (3500) pounds, meat track scale and dial scale with a capacity of five hundred (500) pounds to one thousand (1,000) pounds, two (\$2.00) dollars; built-in warehouse scales with a capacity from thirty-five hundred (3500) pounds to ten thousand (10,000) pounds capacity, five (\$5.00) dollars each portable scale, hanging scale and commercial person weighing scale, two (\$2.00) dollars; grain testers and other small scales used for weighing and testing grain in grain elevators, or warehouses, fifty (50¢) cents; all counter scales with a capacity of one (1) to ten (10) pounds, fifty (50¢) cents; all counter scales with a capacity of over ten (10) pounds, one dollar and twenty-five cents (\$1.25).

Where fees are not paid within thirty (30) days after inspection, there shall be an added charge of fifty per cent (50%) of the inspection fee and the equipment will be sealed and removed from service by the sealer of weights and measures or his deputies, until such fees have been paid.

Anyone found using a weighing device or petroleum measuring device or removing the said seal before all inspection fees have been paid, shall upon conviction, be deemed guilty of a misdemeanor and shall be subject to a fine of not less than ten (\$10.00) dollars nor more than one hundred (\$100.00) dollars.

The sealer of weights and measures, shall by proper regulation, fix inspection fees for any scales, weights, measures, weighing and computing devices and for special services not covered by the foregoing schedule of fees.

History: En. Sec. 2, Ch. 124, L. 1927; amd. Sec. 2, Ch. 31, L. 1933; amd. Sec. 2, Ch. 146, L. 1939; amd. Sec. 1, Ch. 109, L. 1945; amd. Sec. 1, Ch. 163, L. 1947; amd. Sec. 1, Ch. 89, L. 1953; amd. Sec. 1, Ch. 85, L. 1957; amd. Sec. 1, Ch. 145, L. 1961.

Amendment

The 1961 amendment inserted the clause "automatic or hopper shipping scale up to and including ten (10) ton capacity, eight (\$8.00) dollars" in the first paragraph; after the words "coal scale, dump scale," deleted the words "automatic or hopper

shipping scale,"; and increased the fee for wagon scales etc. of up to ten tons capacity from \$8.00 to \$10.00.

Repealing Clause

Section 2 of Ch. 145, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 145, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 3, 1961.

3-203. (3575.3) Repealed.

Repeal

This section (Sec. 3, Ch. 124, L. 1927; Sec. 3, Ch. 146, L. 1939), relating to the

expenses of the state sealer of weights and measures and his deputies, was repealed by Sec. 242, Ch. 147, Laws 1963.

3-226. (3588.2) Possession by warehouseman considered bailment, when—prior right of warehouse receipt holder to grain. Whenever any grain shall be delivered to any person, association, firm or corporation doing a grain, warehouse or grain elevator business in this state, and the receipt issued therefor provides for the delivery of a like amount and kind, grade and quality to the holder thereof in return, such delivery shall be a bailment and not a sale of the grain so delivered, and in no case shall the grain so stored be liable to seizure upon process of any court in an action against such bailee, except action by owners of such warehouse receipts to enforce the terms thereof, but such grain shall at all times in the event of failure or insolvency of such bailee be first applied exclusively to the redemption of outstanding storage warehouse receipts for grain so stored with such bailee. [Effective January 1, 1965.]

History: En. Sec. 3588-B by Sec. 4, Ch. 41, L. 1923; amd. Sec. 11-101, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted from the

end of the section a clause reading, "and in such event grain on hand in any particular warehouse or elevator shall first be applied to the redemption and satisfaction of receipts issued by such warehouse."

3-227. (3589) Annual report of warehouseman, track buyer and grain dealer—special reports—penalty for failure to report. On June 30th of each year every warehouseman, track buyer and grain dealer shall make report, under oath to the commissioner of agriculture, on blanks or forms prepared by him, showing the total weight of each kind of grain received and shipped from or by such warehouseman, track buyer and licensed grain dealer under the laws of Montana, and also the amount of outstanding storage receipts on said date, and a statement of the amount of grain on hand to cover the same. The commissioner of agriculture may also require special reports from such warehouseman, grain dealer or track buyer at such times as the commissioner may deem expedient. The commissioner may cause the business of every warehouseman, track buyer and grain dealer and the mode of conducting the same to be inspected by his authorized agent, whenever deemed proper, and the books, accounts, records, papers and proceedings of every such warehouseman, track buyer and grain dealer shall at all times during business hours be subject to such inspection. Any person, firm, or corporation, who shall knowingly falsify any of its reports to the department of agriculture, or who shall refuse or fail to make such reports when requested to do so by the commissioner of agriculture or his agents, or who shall refuse or resist inspection as provided in this section, shall be guilty of a misdemeanor and be punished by a fine of not less than three hundred dollars (\$300.00), nor more than five hundred dollars (\$500.00).

History: En. Sec. 33, Ch. 216, L. 1921; re-en. Sec. 3589, R. C. M. 1921; amd. Sec. 5, Ch. 41, L. 1923; amd. Sec. 2, Ch. 224, L. 1961.

Amendment

The 1961 amendment inserted "track buyer and grain dealer" after "warehouseman" near the beginning of the first sentence and near the end of the third sen-

tence; inserted "or by" after "received and shipped from" in the first sentence; substituted "such warehouseman, track buyer and licensed grain dealer" for "such warehouse licensed" in the latter part of the first sentence; inserted "grain dealer or track buyer" after "warehouseman" in the second sentence; substituted "the business of every warehouseman, track buyer and grain dealer" for "every warehouse and

business thereof" in the first part of the third sentence; and increased the minimum fine specified at the end of the section from \$50 to \$300.

3-228. (3589) Bond—license and fees of warehouseman, track buyer, grain dealer and others—penalty for operating without a license. Each person, firm, corporation or association or persons operating any public warehouse or warehouses subject to the provisions of this act, and every track buyer, grain dealer, broker, or commission man, or person or association of persons, merchandising in grain shall, on or before the first day of July each year, give a bond executed by a corporate surety authorized to do business in the state of Montana to the state of Montana, in such sum as the commissioner may require, conditioned upon the faithful performance of the acts and duties enjoined upon them by section 3-229, Revised Codes of Montana, 1947. Provided, however, that where a truck, tractor-trailer owner or operator purchasing grain in Montana for the first time for cash or by certified check, the bond provided for in this act shall not be required.

Every person or persons, firm, co-partnership, corporation, or association of persons, operating any public warehouse or warehouses, and every track buyer, grain dealer, broker, commission man, person or association of persons merchandising grain in the state of Montana, shall, on or before the first day of July of each year, pay to the state treasurer of Montana a license fee in the sum of fifteen dollars (\$15.00) for each and every warehouse, elevator, truck, tractor-trailer unit, or other place, owned, conducted, or operated by such person or persons, firm, co-partnership, corporation or association of persons, where or in which grain is received, stored and or shipped, and upon the payment of such fee of fifteen dollars (\$15.00) for each and every warehouse, elevator, truck, tractor-trailer unit, or other place, where or in which grain is merchandised within the state of Montana, the commissioner of agriculture shall issue to such person or persons, firm, co-partnership, corporation or association of persons, a license to engage in grain merchandising at the place or with the licensed units designated within the state of Montana, for a period of one (1) year save only that a public warehouseman shall be permitted to deliver grain previously stored with him, and save further that a producer may be permitted to deliver his own grain. And save further that a producer may buy and haul grain for his own use and that of his neighbors in his community, and save further that the operator of a feed lot in the state of Montana may buy and haul grain for use on his own lot. Any person, firm, association or corporation who shall engage in or carry on any business or occupation for which a license is required by this act without first having procured a license therefor, or who shall continue to engage in or carry on any such business or occupation after such license has been revoked, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than three hundred dollars (\$300.00) nor more than five hundred dollars (\$500.00), and each and every day that such business or occupation is so carried on or engaged in shall be a separate offense.

In addition to the bond and license fee, a public warehouseman shall carry adequate insurance approved by the commissioner of agriculture to

protect the holders of warehouse receipts from loss. A public warehouseman license shall not be issued or may be revoked for failure to comply with this insurance requirement.

History: En. Sec. 33, Ch. 216, L. 1921; re-en. Sec. 3589, R. C. M. 1921; amd. Sec. 5, Ch. 41, L. 1923; amd. Sec. 1, Ch. 145, L. 1959; amd. Sec. 3, Ch. 224, L. 1961; amd. Sec. 1, Ch. 27, L. 1963.

Amendments

The 1959 amendment added the last paragraph to this section.

The 1961 amendment substituted "grain dealer" for "dealer" in the first paragraph and in the first sentence of the second paragraph; substituted the reference to section 3-229 near the end of the first paragraph for "the law"; added the proviso at the end of the first paragraph; inserted "truck, tractor-trailer unit" after "elevator" in two places in the first sentence of the second paragraph; inserted "or in which" after "where" in two places in the first sentence of the second paragraph; inserted "or" between "stored and" and "shipped" in the first sentence of the second paragraph; inserted "or with the licensed units" after "place" in the latter part of the first sentence of the second paragraph; added to the first sentence of the second paragraph the clauses reading, "save only that a public warehouseman shall be permitted to deliver grain previously stored with him, and save further that a producer may be permitted to de-

liver his own grain"; inserted the second sentence of the second paragraph; deleted from the present third sentence of the second paragraph a parenthetical clause which followed "revoked" and read "save only that a public warehouseman shall be permitted to deliver grain previously stored with him"; and changed the fine provided for in the last sentence of the second paragraph by increasing the minimum from \$25 to \$300 and the maximum from \$100 to \$500.

The 1963 amendment substituted "executed by a corporate surety authorized to do business in the state of Montana" for "with good and sufficient sureties to be approved by the commissioner of agriculture" after "give a bond" in the first paragraph.

Separability Clause

Section 4 of Ch. 224, Laws 1961 read "If any section, sub-section, sentence, clause or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act."

Repealing Clause

Section 2 of Ch. 145, Laws 1959 repealed all acts and parts of acts in conflict therewith.

3-233. Fees—disposition. All fees and other charges authorized by law to be fixed by the commissioner of agriculture for the inspection, grading, weighing and protein-testing of grain shall be by said commissioner kept as near the actual cost of such services as is possible. All such fees and charges shall be paid to the commissioner and by him deposited with the state treasurer. The state treasurer shall place five per cent (5%) of all such fees and charges in the general fund and ninety-five per cent (95%) of all such fees and charges in the earmarked revenue fund. Fees deposited in the earmarked revenue fund may be used to pay all claims for expense incurred in inspecting, grading, weighing and protein-testing of grain, when such claims have been approved as provided by law. No funds of the state shall be used by the commissioner in carrying out such services, except moneys presently appropriated.

History: En. Sec. 1, Ch. 203, L. 1957; amd. Sec. 27, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund" for "in a fund to be known as 'The Department of Agriculture Grain Services' Revolving Fund'" at the end of the third sentence; substituted "Fees deposited in the earmarked

revenue fund may be used" for "The state auditor is authorized to draw warrants upon such fund" at the beginning of the fourth sentence; substituted "as provided by law" for "by the state board of examiners" at the end of the fourth sentence; and deleted the former fifth sentence requiring the commissioner to submit a budget to the legislature.

CHAPTER 4—FARM STORAGE OF GRAIN AS BASIS FOR FARM CREDIT
—INSPECTION AND CERTIFICATION

Section 3-408. Fees for inspectors.

3-420. Expenses for administration of act—how paid—fees for inspection.

3-408. (3592.18) Fees for inspectors. The commissioner shall from time to time fix the fees or compensation of inspectors for their services. Such fees or compensation shall be based upon a certain sum per bushel of the grain so inspected.

History: En. Sec. 9, Ch. 27, L. 1929; amd. Sec. 28, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted a pro-

vision at the end of the second sentence reading: "and shall be paid monthly by the commissioner by warrants drawn upon the fund created by the provisions of this act."

3-420. (3592.30) Expenses for administration of act—how paid—fees for inspection. The expense of the administration of this act shall be paid by the owners of the grain, and the fee collected at the time of inspection and sealing. The amount so paid shall be stated in the certificate. The fee for such inspection shall not exceed one-half cent per bushel, except that when the amount of grain offered for inspection by a single applicant is found to be less than one thousand bushels the minimum fee shall be for one thousand bushels. Such fees shall be paid to the commissioner and deposited with the state treasurer in the earmarked revenue fund.

History: En. Sec. 21, Ch. 27, L. 1929; amd. Sec. 5, Ch. 96, L. 1931; amd. Sec. 29, Ch. 147, L. 1963.

Amendment

The 1963 amendment, at the end of the last sentence, substituted "in the ear-

marked revenue fund" for the following: "and the fund shall be known as the department of agriculture revolving appropriation fund for grain grading, and upon such fund the state auditor shall draw warrants to pay the general expenses of this act."

CHAPTER 5—PROTEIN TESTING OF GRAIN

Section 3-510. Fees for protein tests—disposal of proceeds.

3-510. (3592.40) Fees for protein tests—disposal of proceeds. The commissioner of agriculture shall fix the fees for testing grain for protein content, and such fees shall be collected by the analyst when tests are made, and remitted to the commissioner of agriculture once each month, and deposited with the state treasurer in the earmarked revenue fund.

History: En. Sec. 10, Ch. 111, L. 1931; amd. Sec. 30, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "in the earmarked revenue fund" for "in a fund known as the department of agri-

culture revolving appropriation for grain grading, out of which all operating expenses of this act are to be paid" at the end of the first sentence; and deleted a second sentence providing for the disposition of surplus accumulated from fees.

CHAPTER 6—FARM STORAGE PUBLIC WAREHOUSEMEN

Section 3-602. Farm storage public warehouseman defined—license—fee—disposal.

3-602. (3592.45) Farm storage public warehouseman defined—license—fee—disposal. All persons, firms, corporations or associations, now or

hereafter engaged in the business of buying, selling or storing grain in the state of Montana, and licensed by the commissioner to conduct such business, may, upon application in such form as shall be described by the commissioner, receive a license as farm storage public warehousemen in compliance with the provisions of this act, and the rules and regulations of the commissioner. All licenses issued under the provisions of this section shall run for one (1) year, and expire on May 31st of each year. The license fee, which must accompany the application is hereby fixed at five dollars (\$5.00) for each warehouse operated, except that where more than one (1) warehouse operated by the same person, firm, corporation or association is located in one (1) place only one (1) license need be applied for. The fees collected under the provisions of this act shall be paid into the state treasury and credited to the general fund.

History: En. Sec. 2, Ch. 174, L. 1931; amd. Sec. 31, Ch. 147, L. 1963.

eral fund" for "department of agriculture, labor, and industry revolving fund for grain grading" at the end of the section.

Amendment

The 1963 amendment substituted "gen-

CHAPTER 7—BEAN WAREHOUSEMEN

Section 3-704. License required of persons warehousing beans—fee—disposal of moneys—expiration date.

3-704. (3592.57) License required of persons warehousing beans—fee—disposal of moneys—expiration date. All persons engaged in the business of buying and selling at wholesale or warehousing and storing beans, or receiving ~~of~~ soliciting beans for purchase, sale or storage either within or without the state of Montana shall, before engaging in such business, procure a license from the commissioner and shall pay a license fee to the department of agriculture of Montana in the sum of fifteen dollars (\$15.00), which shall be deposited with the treasurer of the state of Montana and credited to the general fund. Said licenses shall be renewed annually and the prescribed fee shall be paid annually. All licenses shall be issued for the fiscal year or fraction thereof and ending June 30th next following.

History: En. Sec. 4, Ch. 164, L. 1935; amd. Sec. 32, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the general fund" at the end of the first sentence for "the special fund known as the 'revolving fund of the division of horti-

culture' to be expended by the chief of the said division upon approval of the treasurer of the state of Montana, and all moneys so deposited shall be held subject to the uses of the chief of the division of horticulture for the purpose of carrying out the provisions of this act."

CHAPTER 8—AGRICULTURAL SEEDS

Section 3-802. Labeling of agricultural seed.

3-816. Vegetable or flower seeds—labeling required.

3-817. Inspection of vegetable and flower seeds by director of state grain and seed laboratory—reports—enforcement.

3-818. Prohibitions.

3-819. Penalty.

3-802. (3594) Labeling of agricultural seed. The owner, vendor, or person in possession of each and every package, parcel, or lot of agricul-

tural seeds, as defined in the preceding section, which contains one (1) pound, or more, of such agricultural seeds, whether in package or in bulk, shall before offering such seeds for sale affix thereto, in a conspicuous place on the exterior of the container of such agricultural seeds, a written or printed label in the English language in legible type or copy, such label containing a statement specifying:

1 to 9. * * * [Same as parent volume.]

10. Prohibition of sales of certain seeds. It shall be unlawful for any person, firm, co-partnership, corporation or association to sell, or to offer for sale, or to expose or display for sale, any agricultural seed within the state of Montana, irrespective of the place of origin of such seed, which contains noxious weed seeds of any one, or more, of said groups of noxious weed seeds as follows:

(1) to (5). * * * [Same as parent volume.]

(6) In mixtures represented by printed labeling, by pictorial illustrations, or in any manner whatsoever, to be for lawn seeding purposes, unless they contain at least fifty per cent (50%) pure seed of perennial fine-leaved species which shall be specified by rules and regulations pursuant to this act. Provided, however, grass mixtures which do not contain fifty per cent (50%) pure seed of perennial fine-leaved grasses may be sold. Provided further that when in packages of twenty-five (25) pounds or less, they shall carry the statements "Not recommended for a fine-leaved perennial turf. Satisfactory for a temporary ground cover or where coarse grass is not objectionable."

A definition of fine-leaf varieties to be promulgated in the regulations is as follows:

(a) Bluegrasses—all varieties except Canada Bluegrass (*Poa Compressa*);

(b) Chewings Red Fescue and all improved varieties;

(c) Creeping Red Fescue and all improved varieties;

(d) Bentgrass—all varieties.

11. * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 12, L. 1913; re-en. Sec. 3594, R. C. M. 1921; amd. Sec. 1, Ch. 110, L. 1929; amd. Sec. 1, Ch. 192, L. 1937; amd. Sec. 3, Ch. 88, L. 1939; amd. Sec. 2, Ch. 155, L. 1951; amd. Sec. 1, Ch. 168, L. 1961.

Amendment

The 1961 amendment added a new clause (6) to subd. 10.

3-816. Vegetable or flower seeds—labeling required. Any individual, firm, partnership, association, corporation or other group selling, offering to sell, or possessing for sale at wholesale or retail vegetable or flower seeds, within the state of Montana must, whether in package or in bulk, affix thereto in a conspicuous place on the exterior of the container of such seeds, a written or printed label or tag in the English language in legible type, script or copy, such label containing a statement specifying:

Each container of less than one pound:

1. Kind and variety of seed.

2. With the name and address of the person who labeled the seed or who sells, offers or exposes such seed for sale within this state.

3. With the name and number per pound of each kind of restricted noxious weed seed.

4. In the case of vegetable seed which has a percentage of germination less than the standard prescribed in the Federal Seed Act of 1960 with subsequent revisions:

- (a) The percentage of germination.
- (b) The percentage of hard seed, if more than one per cent.
- (c) The month and year the test was made.
- (d) The words, "below standard germination," in not less than eight point bold face type.

5. Vegetable or flower seed containing any weed seeds in the "Prohibited List" shall not be sold in the state of Montana.

Each container of one pound or more:

- 1. Kind and variety of seed.
- 2. The lot number or other lot identification.
- 3. The name and number per pound of each kind of restricted noxious weed seed.
- 4. The percentage of germination.
- 5. The percentage of hard seed, if more than one per cent.
- 6. The month and year the test was made.
- 7. The name and address of the person who labeled such seed or who sells, offers or exposes such seed for sale within this state.

8. Vegetable or flower seed containing any weed seeds in the "Prohibited List" shall not be sold in the state of Montana.

Vegetable or flower seed containing weed seeds in the "Restricted List" may be sold in the state of Montana if weed seeds present are not in excess of one-half per cent ($\frac{1}{2}\%$) by weight of vegetable or flower seed. Vegetable or flower seed containing weed seeds not in either the prohibited or restricted lists may be sold in the state of Montana if total weed seeds present are not in excess of two per cent (2%) by weight of vegetable or flower seed. The name or names of all restricted weed seed species present, and the number thereof, singly or collectively, per pound of vegetable or flower seed, shall appear on the label or tag.

Prohibited List

Canada Thistle
(*Cirsium arvense*)
(*Carduus arvensis*)
Leafy spurge
(*Euphorbia esula*)
White Top
(*Lepidium Cardaris draba*)
Perennial peppergrass
(*Cararia repens*)
Hoary cress
(*Hymenophysa (Cardaria) pubescens*)

Quackgrass

(*Agropyron repens*)
Russian knapweed
(*Centaurea picris*)
(*Centaurea repens*)
Perennial Sow Thistle
(*Sonchus arvensis*)
Wild Morning Glory (Field Bindweed) (*Convolvulus arvensis*)
Toadflax
(*Linaria dalmatica*)
Creeping bellflower
(*Campanula rapunculoides*)

Restricted List

Dodder
(*Cuscuta* spp.)
Blue Flowering Lettuce
(*Lactuca pulchella*)
St. Johnswort (Klamath-
weed)
(*Hypericum perforatum*)
Wild Onion (Wild Garlic)
(*Allium vineale*)
Ox-eye Daisy
(*Chrysanthemum*
leucanthemum)
Halogeton
(*Halogeton glomeratus*)
Medusa-head wildrye
(*Elymus Caput-Medusea*)

Spotted knapweed
(*Centaurea maculosa*)
Hoary false alyssum
(*Berteroa incanna*)
Common toadflax
(*Linaria vulgaris*)
Wild Oats
(*Avena fatua*)
Curled Dock
(*Rumex crispus*)
Chickweed
(*Stellaria* spp.)
Plantain
(*Plantago* spp.)
Dandelion
(*Taraxacum officinale*)
Crabgrass
(*Digitaria ischaemum*)

9. The full name and address of the seedsman, importer, dealer or agent or of other persons or person, firm or corporation selling, offering, or exposing the said vegetable or flower seed for sale.

History: En. Sec. 1, Ch. 196, L. 1961.

Title of Act

An act to provide that vegetable or flower seeds to be offered for sale at wholesale or retail in the state of Montana to be properly tagged and dated to apprise the purchaser of certain informa-

tion relative to the contents of the seed, weed, content, and germination; to prescribe duties of the commissioner of agriculture and the director of the Montana grain inspection laboratory and to provide for penalties for non-compliance with this act.

3-817. Inspection of vegetable and flower seeds by director of state grain and seed laboratory—reports—enforcement. The director of the Montana grain inspection laboratory, of the Montana agricultural experiment station, his agent, or agents, shall inspect, examine, or make analyses of and test vegetable or flower seeds sold, offered or exposed for sale in the state at such time and place and to such an extent as he and the commissioner of agriculture may determine. Such director shall report to the commissioner of agriculture all violations as they appear. He shall also annually and not later than September first, make a report to the commissioner of agriculture of all tests made and the results thereof, which report may be published by the commissioner of agriculture, separately, or along with any other annual or biennial report of the department. Such director, his agent or agents, and the commissioner of agriculture and his authorized representatives shall have free access at all reasonable hours to all premises or structures to make examination of any seeds, or any other premises of any warehouse, elevator, or railway company, and upon tendering payment thereof, at the current value, may take any sample or samples of such seeds.

It is hereby made the duty of the commissioner of agriculture of the department of agriculture to administer and enforce this act. For that purpose, he is hereby empowered to make all proper rules and regulations

not inconsistent with this act or any federal laws now in effect or which may hereafter be enacted. To aid in the enforcement, he or his agents shall have power to issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of vegetable or flower seed which the commissioner of agriculture or his agent finds in violation of any of the provisions of this act, which order shall prohibit further sale of such seed until such officer has evidence that the law has been complied with. The seed shall not be confiscated nor destroyed and upon proper correction, by reprocessing, labeling or otherwise, and when in the judgment of the commissioner of agriculture, the requirements of this act have been met, the stop sale order shall be lifted and the seed be permitted to be sold in the regular channels of trade. The director of the Montana grain inspection laboratory of the Montana agricultural experiment station shall formulate all necessary and proper rules and regulations relating to all his duties enumerated herein.

History: En. Sec. 2, Ch. 196, L. 1961.

3-818. Prohibitions. (a) It shall be unlawful to sell, offer or expose for sale any vegetable or flower seed within this state:

1. Not labeled as required herein, or having a false or misleading label;
2. Seed to which there has been false or misleading advertisement;
3. Unless the test to determine the percentage germination shall have been completed within nine months, exclusive of the calendar month in which the test was completed prior to the sale, offering for sale, or exposure for sale;
4. Containing weed seeds in the prohibited list;
5. Containing weed seeds in the restricted list in excess of one-half per cent ($\frac{1}{2}\%$) by weight of vegetable or flower seed;
6. Containing a total of all weed seeds in excess of two per cent (2%) of the whole by weight;

(b) It shall be unlawful for any individual, firm, partnership, association, or corporation within this state:

1. To detach, alter, deface, or destroy any label provided for in this act or the rules and regulations made and promulgated hereunder, or to alter or substitute seed, in a manner that may defeat the purposes of this act;
2. To disseminate any false or misleading advertisement concerning vegetable or flower seeds in any manner or by any means;
3. To hinder or obstruct in any way any authorized person in the performance of his duties, under this act;
4. To fail to comply with a "stop sale" order.

History: En. Sec. 3, Ch. 196, L. 1961.

3-819. Penalty. Any person, firm, or corporation who sells, offers or exposes for sale or distribution in the state any flower or vegetable seeds for seeding purposes, without complying with the requirements of this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars (\$25.00), nor more than one

hundred dollars (\$100.00) and costs of such prosecution, and upon conviction of the second or any subsequent offense shall be fined not less than fifty (\$50.00) nor more than five hundred dollars (\$500.00) and costs of such prosecution.

History: En. Sec. 4, Ch. 196, L. 1961.

CHAPTER 9—SEALERS OF GRAIN

Section 3-904. Filing fee of commissioner—use of funds.

3-904. (3602.4) Filing fee of commissioner—use of funds. The farm storage commissioner shall collect the sum of fifty cents for filing the certificate in his office and the funds so derived shall be deposited in the state treasury to the credit of the general fund.

History: En. Sec. 4, Ch. 111, L. 1933; treasury to the credit of the general fund”
amd. Sec. 33, Ch. 147, L. 1963. for “used for the purpose of providing

Amendment

The 1963 amendment, at the end of the blank certificates and seals for the use of
section, substituted “deposited in the state the sealers and other expenses in the
administration of this act.”

CHAPTER 11—HORTICULTURE—CONTROL OF FRUIT PESTS AND DISEASES

Section 3-1103. Destruction of fruit pests—use of crates.

3-1103. (3610) Destruction of fruit pests—use of crates. For the purpose of preventing the spread of contagious disease among fruit and fruit trees, and for the prevention, treatment, cure and extirpation of fruit pests and diseases of fruit and fruit trees, and for the disinfection of grafts, scions, and orchard debris, empty fruit boxes or packages, or other suspected material or transportable articles dangerous to orchards, fruit and fruit trees, the commissioner of agriculture may prescribe regulation for the inspection, disinfection or destruction thereof, which regulation shall be circulated in printed form by the commissioner among fruit growers and fruit dealers of the state, and shall be published at least ten days in two newspapers of general circulation in the state, and shall be posted in three conspicuous places in each county in the state, one of which shall be at the county courthouse thereof. For further prevention of the spread of diseases dangerous to fruit and fruit trees, it shall be unlawful for any person or persons, dealer or dealers, to allow, or cause to be used a second time, any crate, box, barrel, package or wrapping once having contained nursery stock, except that at the written request of a nurseryman, an inspector may permit boxes or packages having contained nursery stock to be thoroughly fumigated by him or in his presence, at the expense of the nurseryman, for which said inspector shall give a receipt and duly mark the box or package; otherwise, the destruction of the same must be made in its entirety, and the finding of such crate, box, barrel, package or wrapping in possession of any person or persons, dealer or dealers, other than the consignee, shall be considered prima facie evidence of a violation of this act.

The commissioner of agriculture or his authorized representative is hereby authorized to seize and destroy by burning, without breaking, such

crate, box, barrel, package or wrapping wherever found, and to prosecute said violator or violators.

History: En. Sec. 39, Ch. 216, L. 1921;
re-en. Sec. 3610, R. C. M. 1921; amd. Sec.
1, Ch. 29, L. 1963.

Amendment

The 1963 amendment deleted the words "fruit or" which followed "wrapping once having contained" in the first part of the second sentence in the first paragraph.

CHAPTER 12—NURSERIES AND NURSERYMEN—
LICENSE AND REGULATION

Section 3-1212. License required of nurserymen—application and payment of fees—seasonal nurserymen defined.

3-1212. License required of nurserymen—application and payment of fees—seasonal nurserymen defined. It shall be unlawful for any person, firm, or corporation to engage in, conduct, or carry on the business of selling, dealing in, or importing into this state for sale or distribution, any nursery stock, or to act as agent, salesman, or solicitor for any nurseryman or dealer in nursery stock, or to solicit orders for the purchase of nursery stock, without first having obtained from the commissioner of agriculture and having in force a license to do so, and it shall be unlawful for any person to falsely represent that he is an agent, salesman, solicitor, or representative of any nurseryman or dealer in nursery stock. No license shall be issued until the applicant therefor shall have attested to the application for a license furnished upon request by the commissioner of agriculture, paid the fees, as in this act required, and all agents, salesmen, and solicitors for licensed nurseries shall be granted salesmen's certificates free of charge, upon request of the licensee. No license shall be issued to a seasonal nurseryman unless the applicant shall have made application for such license at least thirty (30) days in advance of doing business within the state of Montana each year. A seasonal nurseryman is any person, firm, corporation, or other, engaged in the business of selling, dealing in, or importing into the state of Montana, for sale or distribution, any nursery stock which is for sale only during certain growing seasons and whose place of business is open only during certain growing seasons and not continuously throughout the year.

All licenses shall be in the name of the person, firm, or corporation licensed, and shall show the purpose for which issued, the name and location of the nursery or place of business of the nurserymen or dealer licensed or represented by the agent, salesman, or solicitor. All applications for a license must be in the name of the person, firm, or corporation to be licensed, also it must show the nursery acreage represented by the applicant, and such other information as is desired by the commissioner of agriculture. All licenses must bear the date of issue and shall expire the first day of July next following the date of issue. The license fee shall be fifteen dollars (\$15.00) per annum for a general nursery, dealing in all kinds of nursery products; ten dollars (\$10.00) per annum for a nursery dealing in small fruits, ornamental shrubs, bulbs and perennials; five dollars (\$5.00) for a nursery dealing in bulbs and perennials only; and fifteen dollars (\$15.00) for seasonal nurserymen.

History: En. Sec. 1, Ch. 220, L. 1943; and fourth sentences to the first paragraph and the words "and fifteen dollars (\$15.00) for seasonal nurserymen" at the end of the second paragraph.

Amendment

The 1963 amendment added the third

CHAPTER 14—STANDARD GRADES AND BRANDS FOR
MONTANA FARM PRODUCTS

Section 3-1404. Grading and branding of products required—labeling of culls.

3-1404. (3633.4) Grading and branding of products required—labeling of culls. (a) to (d). * * * [Same as parent volume.] ✓

(e) Provided further that U. S. commercial grade shall be a standard grade in the state of Montana.

History: En. Sec. 4, Ch. 165, L. 1933; amd. Sec. 1, Ch. 71, L. 1937; amd. Sec. 1, Ch. 30, L. 1963. "not" which appeared between "shall" and "be" in subsection (e); and deleted former subsection (f), for text of which see parent volume.

Amendment

The 1963 amendment deleted the word

CHAPTER 15—MISCELLANEOUS POWERS AND DUTIES OF
DEPARTMENT OF AGRICULTURE

Section 3-1510. Intrastate transactions with paints, etc.—label—contents of label.

3-1511. Penalty for violations.

3-1512. Possession as prima facie evidence.

3-1513. Enforcement of act.

3-1514. Designation of laboratory for analysis—report of analysis.

3-1515. County attorney—duties regarding act.

3-1510. Intrastate transactions with paints, etc.—label—contents of label. Every person, firm, or corporation, who manufactures for sale, sells, offers for sale, or ships in intrastate transactions within the state, any paint, mixed paint, paste paint, or compound intended for use as paint, or any varnish, decorative protective coatings or additives for wood, metal, concrete, or roof coatings, but excluding artists' colors, waxes and polishes, shall label the same in a clear and distinct manner. Such label shall recite a full analysis of the content with a specification of pigment and vehicle. An analysis by percentage of the pigment content and the analysis by percentage of the vehicle content. The label shall further recite the name and address of the manufacturer or distributor of the product. The analysis and composition shall be subject to inspection by the chief chemist of a laboratory designated by the department of agriculture of the state of Montana.

History: En. Sec. 1, Ch. 69, L. 1959.

Title of Act

An act requiring the labeling of all containers of paints, varnishes, roof coatings and other protective and decorative materials offered for sale, sold, or shipped

in intrastate transactions within the state; providing for the inspection and analysis of paints, varnishes, roof coatings and other protective and decorative materials by a chief chemist designated by the department of agriculture; providing for penalties for violation of this act.

3-1511. Penalty for violations. Any person, firm, or corporation who fails to comply with all of the provisions of this act shall be subject to prosecution and upon conviction, to a fine of not less than twenty-five

(\$25.00) dollars and not more than one hundred (\$100.00) dollars and all costs, including cost of analysis to the amount of twenty-five (\$25.00) dollars or by imprisonment in a county jail not to exceed sixty (60) days.

History: En. Sec. 2, Ch. 69, L. 1959.

3-1512. Possession as prima facie evidence. The possession, either constructive or actual by any person, firm, or corporation dealing in said articles or substances hereinabove described and not properly labeled as provided by section 1 [3-1510] of this act, shall be considered prima facie evidence that the same is kept for sale in violation of the provisions of this act and punishable under it.

History: En. Sec. 3, Ch. 69, L. 1959.

3-1513. Enforcement of act. The department of agriculture of the state of Montana shall be responsible for the enforcement of this act and shall appoint any assistants or agents deemed necessary for the proper enforcement of all the provisions of this act. These appointed agents or assistants shall be duly authorized for the purpose, and shall have access to all places of business, factories, stores and buildings used for the manufacture or sale of paints or other products described in section 1 [3-1510] of this act. They shall have the power and authority to purchase and open any package, can, jar, tub or other receptacle containing any of the articles recited in section 1 [3-1510] of this act.

History: En. Sec. 4, Ch. 69, L. 1959.

3-1514. Designation of laboratory for analysis—report of analysis. The department of agriculture of the state of Montana shall designate the laboratory where analysis of the products recited in section 1 [3-1510] of this act shall be made. When analysis of the products mentioned in section 1 [3-1510] of this act are found to be in violation of this act, the chief chemist of the laboratory appointed and designated by the department of agriculture shall report the facts of his tests to the department of agriculture. Every certificate duly signed and acknowledged by the chief chemist of the laboratory relating to the analysis of any of the products mentioned in section 1 [3-1510] of this act shall be presumptive evidence of the facts therein stated.

History: En. Sec. 5, Ch. 69, L. 1959.

3-1515. County attorney—duties regarding act. It shall be the duty of the county attorney of the county of the state of Montana wherein the violation of this act occurred, to prosecute every person, firm, or corporation violating any of the provisions of this act when the evidence thereof has been presented by the chief chemist of the laboratory making the analysis as provided for in this act.

History: En. Sec. 6, Ch. 69, L. 1959.

CHAPTER 17—COMMERCIAL FERTILIZER—REGULATION OF SALE

- Section 3-1709. Report of analyses.
 3-1714. Definition of terms.
 3-1715. Registration and licenses.
 3-1716. Labeling.
 3-1717. Inspection fees.
 3-1723. Rules and regulations and hearings.
 3-1724. Cancellation of registration.

3-1709. (4208.9) Report of analyses. All such analyses of commercial fertilizer, as required by this act, shall be reported to the commissioner of agriculture of the state of Montana. It shall be the duty of the commissioner of agriculture to enforce this act and for that purpose, he shall make all proper and necessary rules and regulations.

History: En. Sec. 9, Ch. 153, L. 1931; amd. Sec. 4, Ch. 183, L. 1939; amd. Sec. 1, Ch. 33, L. 1959; amd. Sec. 34, Ch. 147, L. 1963.

sentences, which were inserted by the 1959 amendment.

Appropriation

Amendments

The 1959 amendment divided the former second sentence into two sentences; inserted sentences reading, "All license fees provided for in section 3-1705 shall be paid to the commissioner of agriculture and by him deposited with the state treasurer. The state treasurer shall place five per cent (5%) of all such fees in the general fund and ninety-five per cent (95%) of all such fees in the fund used for the purposes specified in this section"; and made minor changes in phraseology.

The 1963 amendment deleted the former second and fifth sentences, which were based on the second sentence in the parent volume, and the former third and fourth

Section 2 of Ch. 33, Laws 1959 read "There is now a fund in existence constituted in the manner and for the purposes specified in section 3-1709 of the Revised Codes of Montana, 1947, which fund has been designated as Fund No. 065, Commercial Fertilizer. Five per cent (5%) of the balance of said Fund No. 065 on July 1, 1959, shall be placed in the general fund by the state treasurer and ninety-five per cent (95%) of said balance as of said date shall remain in said Fund No. 065 to effect the purposes of the act as heretofore specified."

Repealing Clause

Section 3 of Ch. 33, Laws 1959 repealed all acts and parts of acts in conflict therewith.

3-1714. Definition of terms. (a) The term "fertilizer materials" means any substance containing nitrogen phosphorus, potassium, or any recognized plant nutrient element or compound which is used primarily for its plant nutrient content or for compounding mixed fertilizers except unmanipulated animal and vegetable manures.

(b) to (e). * * * [Same as parent volume.] ✓

(f) Guaranteed analysis:

(1) Until July 1, 1964, and thereafter until the commissioner prescribes the alternative form of "guaranteed analysis" in accordance with the provisions of subparagraph (2) hereof. The term "guaranteed analysis" shall mean the minimum percentage of plant nutrients claimed in the following order and form:

- a. Total Nitrogen (N) _____ per cent
 Available Phosphoric Acid (P_2O_5) _____ per cent
 Soluble Potash (K_2O) _____ per cent

b. For unacidulated mineral phosphatic materials and basic slag, both total and available phosphoric acid and the degree of fineness. For bone, tankage, and other organic phosphatic materials, total phosphoric acid.

c. Guarantees for plant nutrients other than nitrogen, phosphorus and potassium may be permitted or required by regulation of the commissioner. The guarantees for such other nutrients shall be expressed in the form of the element. The sources of such other nutrients (oxides, salt, chelates, etc.) may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the commissioner. When any plant nutrients or other substances or compounds are guaranteed, they shall be subject to inspection and analysis in accord with the methods and regulations prescribed by section 3-1718 (b) of this act.

d. Except when prohibited by regulation, potential basicity or acidity expressed in terms of calcium equivalent in multiples of one hundred pounds per ton may be shown.

(2) At any time after July 1, 1964, that the commissioner finds, after public hearing following due notice, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, he may require by regulation thereafter the "guaranteed analysis" shall be in the following form:

Total Nitrogen (N)	-----	per cent
Available Phosphorus (P)	-----	per cent
Soluble Potassium (K)	-----	per cent

provided, however, that the effective date of said regulation shall be not less than six (6) months following the issuance thereof, and provided, further, that for a period of two (2) years following the effective date of said regulation, the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash; provided, however, that after the effective date of a regulation issued under the provisions of this section, requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus, and potassium shall constitute the grade.

(g) The term, "grade" means the percentages of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash stated in whole numbers in the same terms, order and percentages as in the "guaranteed analysis."

(h) to (o). * * * [Same as parent volume.]

(p) A specialty fertilizer is a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries, and may include commercial fertilizers used for research or experimental purposes.

(q) A "soil amendment" is any material not included under commercial fertilizer, or unmanipulated animal and vegetable manures, lime, limestone, marl, unground bone, or those products subject to the federal insecticide, fungicide or rodenticide act as amended, which is added to

soil or to plants for purposes of influencing the growth, yield or quality of the crop or soil flora or fauna or other soil characteristics.

History: En. Sec. 3, Ch. 41, L. 1957; amd. Sec. 1, Ch. 43, L. 1963.

Amendment

The 1963 amendment substituted "phosphorus" for "phosphoric acid" and "potassium" for "potash" in subsection (a); inserted in subparagraph (f) (1) the matter preceding the first period therein; inserted the designation for subparagraph (f) (1) a; deleted from the beginning of former subparagraph (f) (2) a clause reading, "The term 'guaranteed analysis'

in the form specified in subparagraph (1) includes."; redesignated former subparagraphs (f) (2) (i) and (f) (2) (iii), respectively, as (f) (1) b and (f) (1) d; substituted a new subparagraph (f) (1) c for a former subparagraph (f) (2) (ii) reading, "When permitted by the commissioner, additional plant nutrients expressed as the elements"; inserted a new paragraph (f) (2); inserted the words "phosphorus or" and "soluble potassium or" in paragraph (g); and added new paragraphs (p) and (q).

3-1715. Registration and licenses. (a) Each brand and grade of commercial fertilizer and each "soil amendment" shall be registered before being offered for sale, sold or distributed in this state. The application for registration shall be submitted to the commissioner on a form furnished by the commissioner and shall be accompanied by a fee of thirty-five dollars (\$35) per brand and ten dollars (\$10) per grade which shall be deposited in the state treasury to the credit of the general fund. Upon approval by the commissioner a copy of the registration shall be furnished to the applicant. All registrations expire on December 31 of each year. The application shall include the following information:

- (1) The brand and grade.
- (2) The guaranteed analysis.
- (3) The sources from which the nitrogen, phosphorus and potassium are derived.
- (4) The commissioner may require a manufacturer of commercial fertilizer to furnish additional information if the foregoing does not adequately describe the fertility value claimed and/or the composition of the product.
- (5) The name and address of the registrant.
- (6) For soil amendments, in addition to the information required in paragraphs (1), (2), (3), (4), and (5) of this section, applications for registration must include the name and chemical designation and content of active ingredients.

(b) A distributor shall not be required to register any brand or grade of commercial fertilizer which is already registered under this act by another person.

(c) The plant nutrient content of each and every brand and grade of commercial fertilizer must remain uniform for the period of registration.

(d) Any distributor who blends or mixes fertilizer materials to a customer's order without a guaranteed analysis of the mixture in accordance with part (a) of this section, must first make application to obtain a license from the commissioner. The application for such a license shall be submitted in duplicate to the commissioner on forms furnished by the commissioner and shall be accompanied by a fee as herein prescribed which sum shall constitute the license fee in event the license is granted.

If said distributor blends or mixes fertilizer materials at more than one fixed location, or by more than one mobile mechanical unit, then a license is required for each location and for each such mobile mechanical unit. The license shall be twenty-five dollars (\$25) in the case of each location, but in the case of mobile units each such unit owned and operated by any one distributor shall be licensed at a rate of twenty-five dollars (\$25) for the first unit, and ten dollars (\$10) for each such additional mobile unit. The license shall expire on December 31 of each year.

Fees so collected shall constitute a fund for payment of the costs of inspection, sampling, and analysis and other expenses necessary for the administration of this act. Each licensee shall furnish the commissioner with a confidential written statement of the tonnage of each grade of fertilizer material used by him in this state in his blending and mixing operation. Said statement shall cover the semiannual periods ending June 30 and December 31 of each year, and shall be filed with the commissioner not later than 30 days (which may be extended on valid reason therefore [therefor] an additional thirty days, on written requests to the commissioner) after the close of each semiannual period. In lieu of the guaranteed analysis, the licensee must furnish to each and every purchaser and consumer in written or printed form, an invoice or delivery ticket showing the net weight and guaranteed analysis of each and every one of the materials used, which shall accompany delivery.

The distributor shall at all times produce an intimate and uniform mixture of fertilizer materials or soil amendments. When two or more fertilizers are delivered in the same load, they shall be intimately and uniformly mixed unless they are in separate compartments.

The commissioner is authorized and empowered to cancel the license as herein provided upon satisfactory evidence that the licensee has used fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this section; provided that no license shall be revoked or refused until the licensee shall have been given a hearing by the commissioner pursuant to section 3-1723 of this act.

History: En. Sec. 4, Ch. 41, L. 1957; amd. Sec. 2, Ch. 43, L. 1963; amd. Sec. 35, Ch. 147, L. 1963.

Compiler's Note

This section was amended twice in 1963 —by Chapter 43 and by Chapter 147. Neither amendatory act mentioned nor incorporated the amendments made by the other. Since the two amendments do not appear to conflict, the compiler has made a combined section, incorporating both amendments.

Amendments

Chapter 43, Laws 1963, inserted "and each 'soil amendment'" near the begin-

ning of subsection (a); substituted "phosphorus and potassium" for "phosphoric acid and potash" in clause (a) (3); added clause (a) (6); and completely rewrote subsection (d), for original text of which see parent volume.

Chapter 147, Laws 1963, added "which shall be deposited in the state treasury to the credit of the general fund" at the end of the second sentence of subsection (a); and deleted the former third sentence of subsection (a), reading: "Fees so collected shall constitute a fund for payment of the costs of inspection, sampling, and analysis and other expenses necessary for the administration of this act."

3-1716. Labeling. (a), (b). * * * [Same as parent volume.] /

(c) Soil amendments shall be labeled in accordance with paragraph (a) of this section or if distributed in bulk, paragraph (b), and in addition

shall show the name or chemical designation and content of the active ingredients.

History: En. Sec. 5, Ch. 41, L. 1957; **Amendment**
amd. Sec. 3, Ch. 43, L. 1963.

The 1963 amendment added subsection (c).

3-1717. Inspection fees. (a) There shall be paid to the commissioner for all commercial fertilizers offered for sale, sold, or distributed in this state an inspection fee at the rate of fifteen cents (15¢) per ton: Provided that sales to manufacturers or exchanges between them are hereby exempted. Fees so collected shall be deposited in the state treasury to the credit of the general fund. On individual packages of commercial fertilizer containing ten (10) pounds or less, there shall be no inspection fee. Where a person sells commercial fertilizer in packages of ten (10) pounds or less and in packages over ten (10) pounds, the inspection fee shall apply only to that portion sold in packages of over ten (10) pounds.

(b) Payment of the inspection fee shall be evidenced by a statement made in due form of law, of commercial fertilizer distributed, together with documents showing that fees corresponding to the tonnage were received by the commissioner.

Every registrant who distributes commercial fertilizer in this state shall:

File an affidavit semiannually within thirty (30) days after each January 1 and each July 1 of each year setting forth the number of net tons of commercial fertilizer distributed in this state during the preceding six-months' (6) period; and upon filing such statement shall pay the inspection fee at the rate stated in paragraph (a) of this section. If the tonnage report is not filed and the payment of the inspection fee is not made within fifteen (15) days after the date due, a collection fee amounting to ten (10) per cent (minimum ten dollars (\$10.00)) of this amount due shall be assessed against the registrant, and the amount of fees due shall constitute a debt and become the basis of a judgment against the registrant.

History: En. Sec. 6, Ch. 41, L. 1957;
amd. Sec. 36, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "be deposited in the state treasury to the

credit of the general fund" for "constitute a fund for payment of the costs of inspection, sampling, and analysis and other expenses necessary for the administration of this act" in the second sentence of subd. (a).

3-1719. Repealed.

Repeal

This section (Sec. 8, Ch. 41, L. 1957), relating to minimum chemical content of

plant food, was repealed by Sec. 4, Ch. 43, Laws 1963.

3-1723. Rules and regulations and hearings. (a) For the enforcement of this act, the commissioner is authorized to prescribe and, after public hearing, (1) having notified by mail all registrants on file and (2) having advertised once a week for two consecutive weeks in two newspapers of general circulation; to enforce such rules and regulations

relating to the distribution of commercial fertilizers as he may find necessary to carry into effect the full intent and meaning of this act.

(b) The commissioner shall, before denying the application for a registration or before canceling or revoking any registration, set the matter down for a hearing, and at least ten (10) days prior to the date set for the hearing, shall notify the applicant or distributor in writing, which notice shall contain an exact statement of the charges made and the date and place of the hearing and shall afford the applicant or distributor an opportunity to be heard in person or by an attorney in reference thereto. The written notice may be served by delivering it personally to the applicant or distributor, or by mailing it by registered mail to the last known business address of the applicant or distributor. The hearing on such charges shall be held before the commissioner at such time and place as the commissioner shall prescribe, and the hearing may be continued from time to time.

History: En. Sec. 12, Ch. 41, L. 1957; amd. Sec. 5, Ch. 43, L. 1963.

Amendment

The 1963 amendment designated the

previous text of the section as subsection (a); substituted clauses (1) and (2) in subsection (a) for "following due public notice"; and added subsection (b).

3-1724. Cancellation of registration. The commissioner is authorized and empowered to cancel the registration of any commercial fertilizer or to refuse to register any commercial fertilizer as herein provided, upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of this act or any rules and regulations promulgated thereunder: Provided, that no registration shall be revoked or refused until the registrant shall have been given the opportunity to appear for a hearing by the commissioner, as provided in section 3-1723 of this act.

History: En. Sec. 13, Ch. 41, L. 1957; amd. Sec. 6, Ch. 43, L. 1963.

Amendment

The 1963 amendment added "as provided in section 3-1723 of this act" at the end of the section.

Separability Clause

Section 7 of Ch. 43, Laws 1963 read "Constitutionality. If any clause, sentence, paragraph, or part of this act shall for any reason be judged invalid by any court of competent jurisdiction, such judgment shall not affect, impair, or invalidate the

remainder thereof but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered."

Repealing Clause

Section 8 of Ch. 43, Laws 1963 repealed all laws and parts of laws in conflict or inconsistent therewith.

Effective Date

Section 9 of Ch. 43, Laws 1963, provided for an effective date of July 1, 1963.

CHAPTER 18—HAY DEALERS—BOND AND LICENSE

(Repealed—Section 1, Chapter 81, Laws of 1959)

3-1801 to 3-1807. Repealed.

Repeal

These sections (Secs. 1 to 7, Ch. 204, L. 1937), relating to the licensing of hay

dealers, were repealed by Sec. 1, Ch. 81, Laws 1959, effective March 2, 1959.

CHAPTER 19—MUSTARD SEED—GRADE REQUIREMENTS—
PURCHASER'S BOND AND LICENSE

Section 3-1906. Administration.
3-1910. Disposal of funds.

3-1906. Administration. It is hereby made the duty of the commissioner of agriculture of the state of Montana to administer and enforce this act, and for such purpose he is hereby empowered to make all proper necessary rules and regulations, and he is also empowered to and he shall fix the fees for inspection and weighing of mustard seed and such fees shall be a lien upon such mustard seed until paid, and such fees shall be collected by the commissioner of agriculture or his duly authorized representatives and the commissioner of agriculture shall deposit such fees with the state treasurer in the earmarked revenue fund. All operating expenses of this act shall be paid from such fees.

History: En. Sec. 6, Ch. 35, L. 1941;
amd. Sec. 37, Ch. 147, L. 1963.

Amendment

The 1963 amendment corrected the title of the commissioner of agriculture; substituted "the earmarked revenue fund"

for "a fund known as the 'department of agriculture revolving appropriation fund,' for grain grading, out of which all operating expenses of this act shall be paid" at the end of the first sentence; and added the second sentence.

3-1910. Disposal of funds. All funds accruing from license fees shall be deposited by the commissioner of agriculture with the state treasurer and shall be credited to the general fund.

History: En. Sec. 3, Ch. 64, L. 1939;
amd. Sec. 38, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "gen-

eral fund" for "revolving fund of the grain division of the department of agriculture, labor and industry."

CHAPTER 20—COMMERCIAL FEEDS—REGULATION

Section 3-2012. Enforcing official.
3-2013. Definitions of words and terms.
3-2014. Registration.
3-2015. Labeling.
3-2016. Inspection fees.
3-2017. Customer-formula feed, special-formula feed, made to order feed, and custom-mixed or custom-milled feeds.
3-2018. Adulteration.
3-2019. Misbranding.
3-2020. Inspection, sampling and analysis.
3-2021. Rules and regulations and hearings.
3-2022. Detained commercial feeds.
3-2023. Penalties.
3-2024. Publications:

3-2001 to 3-2011. Repealed.

Repeal

These sections (Secs. 1 to 10, Ch. 228, L. 1943; Sec. 1, Ch. 42, L. 1951; Secs. 1 to 3, Ch. 127, L. 1951), relating to regulation of commercial feeds, were repealed by Sec. 15, Ch. 127, Laws 1963, effective

January 1, 1964. Sections 39 and 40, Ch. 147, Laws 1963, purported to amend sections 3-2004 and 3-2007; however, under the rule of section 43-515, these amendments were void.

3-2012. Enforcing official. This act shall be administered by the commissioner of agriculture of the state of Montana, hereinafter referred to as the "commissioner."

History: En. Sec. 1, Ch. 127, L. 1963.

Title of Act

An act to provide registration of commercial feeds; defining commercial feed and other terms; to provide for labeling commercial feeds; to provide for inspection and sampling of commercial feeds and fees therefore; to provide prohibition against distribution of non-registered, adulterated, or misbranded feeds; to provide for the administration of this act by the commissioner of agriculture and empowering him to make rules and regula-

tions necessary to administration of this act; to provide power in the commissioner to detain, condemn and confiscate feeds being distributed in violation of this act or regulations made thereunder; to provide penalties for violations of this act or regulations; and to take effect and be in force from and after the first day of January, 1964; providing for a severability clause; and repealing sections 3-2001, 3-2002, 3-2003, 3-2004, 3-2005, 3-2006, 3-2007, 3-2008, 3-2009, 3-2010, 3-2011, R. C. M. 1947.

3-2013. Definitions of words and terms. When used in this act:

(a) The term "person" includes individual, partnership, association, firm and corporation.

(b) The term "distribute" means to offer for sale, sell, or barter commercial feed or customer-formula feed; or to supply, furnish or otherwise provide commercial feed or customer-formula feed to a contract feeder; the term "distributor" means any person who distributes.

(c) The term "sell" or "sale" includes exchange.

(d) The term "commercial feed" includes customer-formula feeds as this term is used in this act and means any material whether simple, mixed, compounded, ground, unground, organic or inorganic, used as a feed for animals other than man, or any material including minerals, vitamins, antibiotics, antioxidants, medicines, drugs, chemicals and other substances, materials, or elements, or parts thereof intended for use or used as an ingredient or component of a mixture of materials, used as a feed for animals other than man except:

(1) The mixed or unmixed whole seeds or meals made directly from and consisting of the entire seeds of corn, wheat, rye, barley, oats, buckwheat, flaxseeds, kaffir, milo and other grain seeds in combination or without molasses and containing no other ingredients.

(2) Unground hay.

(3) Whole or ground straw, stover, silage, cobs, husks, hulls, and wet beet pulp when not mixed with other materials and/or not pelleted.

(4) Individual chemical compounds when not mixed with other materials.

(5) Feeds used solely for household pets.

(6) Materials furnished by the customer-buyer and which were produced by the customer-buyer or acquired by him from a source other than from the person whose services are engaged in the milling, mixing, or processing of a mixture prepared for and in accordance with the specific instructions of the customer-buyer.

(e) The term "feed ingredient" means each of the constituent materials making up a commercial feed.

(f) The term “customer-formula feed” means a mixture of commercial feeds and/or materials each batch of which mixture is mixed according to the specific instructions of the final purchaser, or contract feeder.

(g) The term “brand” means the term, design, trademark, or other specific designation under which an individual commercial feed is distributed in this state.

(h) The term “label” means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed or customer-formula feed is distributed, or on the invoice or delivery slip with which a commercial feed or customer-formula feed is distributed.

(i) The term “ton” means a net weight of two thousand pounds avoirdupois.

(j) The terms “per cent” or “percentage” means percentage by weight.

(k) The term “official sample” means any sample of feed taken by the chemist of the agricultural experiment station of Montana state college or his deputy and designated as “official” by the chemist.

(l) The term “contract feeder” means a person who, as an independent contractor, feeds commercial feed and/or customer-formula feed to animals pursuant to a contract whereby such commercial feed and/or customer-formula feed is supplied, furnished or otherwise provided to such person and whereby such person’s remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product.

(m) The terms “purchaser” and “customer-buyer” mean any person, firm, organization, agency, association, or group who buys or otherwise acquires a commercial feed, customer-formula feed, or custom-mix or custom-mill services.

(n) The term “custom-mix” or “custom-mill” means services only.

(o) An ultimate consumer, means a person who feeds all or part of the feeds which he has received from the distributor.

History: En. Sec. 2, Ch. 127, L. 1963.

3-2014. Registration. (a) Each commercial feed shall be registered before being distributed in this state; provided, however, that customer-formula feeds are exempt from registration. The application for registration shall be submitted to the commissioner on forms furnished by the commissioner and shall be accompanied by a fee of ten dollars (\$10.00) for each commercial feed submitted for registration. Upon the request of the commissioner, each such registration shall be accompanied by a label or other printed matter describing the product, and shall include the information required by subparagraphs (2), (3), (4) and (5), of paragraph (a) of section 4 [3-2015]. Upon approval by the commissioner, a copy of the registration shall be furnished to the applicant. Once registered, the registration of a feed shall be renewed by December 31 of each year by payment of an annual fee of ten dollars (\$10.00). Monies collected under the provisions of this section shall be deposited in the general fund of the state.

The commissioner may by regulation permit on the registration the alternative listing of ingredients of comparable feeding value, provided that the label for each package shall state the specific ingredients which are in such package.

(b) A distributor shall not be required to register any brand of commercial feed which is already registered under this act by another person.

(c) Changes in the guarantee of either chemical or ingredient composition of a registered commercial feed may be permitted by the commissioner provided there is satisfactory evidence that such changes would not result in a lowering of the feeding value of the product for the purpose for which designed.

(d) The commissioner is empowered to refuse registration of any application not in compliance with the provisions of the act and to cancel any registration subsequently found not to be in compliance with any provisions of this act; provided, however, that no registration shall be refused or cancelled until the registrant shall have been given opportunity to be heard before the commissioner and to amend his application in order to comply with the requirements of this act.

History: En. Sec. 3, Ch. 127, L. 1963.

3-2015. Labeling. (a) Any commercial feed distributed in this state shall be accompanied by a legible label as approved by the commissioner, bearing the following information:

(1) The net weight.

(2) The name or brand under which the commercial feed is sold.

(3) The guaranteed analysis of the commercial feed, listing the minimum percentage of crude protein, minimum percentage of crude fat, and maximum percentage of crude fiber. For mineral feeds the list shall include the following if added:

Minimum and maximum percentages of calcium (Ca), minimum percentage of phosphorus (P), minimum percentage of iodine (I), and minimum and maximum percentages of salt (NaCl). Other substances or elements, determinable by laboratory methods, may be guaranteed by permission of the commissioner. When any items are guaranteed, they shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the commissioner. Products sold solely as minerals and/or vitamin supplements and guaranteed as specified in this section need not show guarantees for protein, fat and fiber.

(4) The common or usual name of each ingredient used in the manufacture of the commercial feed, except as the commissioner may by regulation, permit the use of (a) collective term for a group of ingredients all of which perform the same function.

(5) The name and principal address of the person responsible for distributing the commercial feed.

(b) When a commercial feed is distributed in this state in bags or other containers, the label shall be placed on or affixed to the container; when a commercial feed is distributed in bulk, the label shall accompany delivery and be furnished to the purchaser at the time of delivery.

(c) A customer-formula feed shall be labeled by invoice. The invoice, which is to accompany delivery and be supplied to the purchaser at the time of delivery, shall bear the following information:

- (1) Name and address of the mixer.
- (2) Name and address of the purchaser.
- (3) Date of sale.

(4) Brand name and number of pounds of each registered commercial feed used in the mixture and the name and number of pounds of each other feed ingredient added.

(d) If a commercial feed or a customer-formula feed contains a non-nutritive substance which is intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or which is intended to affect the structure or any function of the animal body, the commissioner may require the label to show the amount present, directions for use, and/or warnings against misuse of the feed.

History: En. Sec. 4, Ch. 127, L. 1963.

3-2016. Inspection fees. (a) Each and every person who distributes commercial feed in this state to the ultimate consumer shall pay to the commissioner an inspection fee, based on the gross annual value of feed distributed in this state, according to the following schedule:

Up to and including five hundred dollars (\$500.00) gross annual value of feeds distributed	\$10.00.
Over five hundred dollars (\$500.00) and up to and including one hundred thousand dollars (\$100,000.00) gross annual value of feeds distributed	\$25.00.
Each and every twenty-five thousand dollars (\$25,000.00) additional gross annual value of feeds distributed or fraction thereof, an additional inspection fee of	\$10.00;

provided, however, that distribution of commercial feeds to manufacturers are hereby exempted if the commercial feeds so distributed are used solely in the manufacture of feeds which are registered. Monies collected under the provisions of this section shall be deposited in the general fund of the state.

(b) Every person, except as hereinafter provided, who distributes commercial feed in this state shall:

(1) File, not later than the last day of January of each year, a statement setting forth the gross annual value of feeds distributed in this state during the preceding calendar year; and upon filing such statement shall pay the inspection fee at the rate stated in paragraph (a) of this section. When more than one (1) person is involved in the distribution of a commercial feed, the person who distributes to the consumer is responsible for reporting the gross annual value of feeds so distributed and paying the inspection fee.

(2) Keep such records as may be necessary or required by the commissioner to indicate accurately the gross annual value of commercial feeds distributed in the state, and the commissioner or his authorized

agent shall have the right to examine such records to verify statement of gross annual value of feeds distributed. Failure to make an accurate statement of the gross annual value of feeds distributed or to pay the inspection fee or to comply as provided for in this section shall constitute sufficient cause for the cancellation of all registrations on file for the distributor after a hearing as provided in this act, and the distributor shall be subject to the penalties set forth in section 12 [3-2023] of this act.

History: En. Sec. 5, Ch. 127, L. 1963.

3-2017. Customer-formula feed, special-formula feed, made to order feed, and custom-mixed or custom-milled feeds. (a) The terms "customer-formula feed," "special-formula feed" and "made to order feed" are synonymous and mean a mixture of commercial feed and/or feed material, all or any part of which except for molasses, is furnished by the person or distributor who processes, mixes, mills, or otherwise prepares such mixture, and which is mixed according to the specific instructions of the purchaser. The name and quantity of each item supplied by the purchaser must be shown and properly identified as such on the invoice furnished the purchaser and the portion of such mixture that is furnished by the person or distributor who processes, mixes, mills or otherwise prepares such mixture, shall likewise be shown on the invoice setting forth the information provided for in section 4 (c) and (d) [3-2015 (c), (d)] of this act.

(b) No manufacturer or other person shall mix, mill, process or engage in a practice of mixing, milling, or preparation of a customer-formula feed without complying with the provisions of section 5 [3-2016] of this act.

(c) Under section 2 (d) [3-2013 (d)] of this act, the term "commercial feed" is defined to include customer-formula feed. This definition is hereby re-affirmed, and all of the provisions of this act which apply to commercial feed also apply with equal force and effect upon "customer-formula feed" except where the language specifically exempts "customer-formula feed."

(d) The terms "custom-mixed," "custom-milled," or similar terms means the service rendered a customer or purchaser in the milling, mixing, or processing of materials produced by the customer or purchaser or acquired by him from a source other than from the person who mixes, mills, or processes the mixture, except that the addition of molasses acquired from the person who mixes, mills, or processes the mixture shall not be deemed to render such feed a commercial feed, and are not subject to the provisions of this act.

History: En. Sec. 6, Ch. 127, L. 1963.

3-2018. Adulteration. No person shall distribute an adulterated feed. A commercial feed or customer-formula feed shall be deemed to be adulterated:

(a) If any poisonous, deleterious or non-nutritive ingredient has been added in sufficient amount to render it injurious to health when fed in accordance with directions for use on the label.

(b) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor.

(c) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling.

(d) If it contains added hulls, screenings, straw, cobs, or other high fiber material unless the name of each such material is stated on the label.

History: En. Sec. 7, Ch. 127, L. 1963.

3-2019. Misbranding. No person shall distribute misbranded feed. A commercial feed or customer-formula feed shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular.

(b) If it is distributed under the name of another feed.

(c) If it is not labeled as required in section 4 [3-2015] of this act and in regulations prescribed under this act.

(d) If it purports to be or is represented as a feed ingredient, or if it purports to contain or is represented as containing a feed ingredient, unless such feed ingredient conforms to the definition of identity, if any, prescribed by regulation of the commissioner; in adopting of such regulations the commissioner shall give due regard to commonly accepted definitions such as those issued by the association of American feed control officials.

(e) If any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

History: En. Sec. 8, Ch. 127, L. 1963.

3-2020. Inspection, sampling and analysis. (a) At the request of the commissioner of agriculture, the chemist of the agricultural experiment station of Montana state college or his deputy shall sample, inspect, make analysis of and test commercial feeds and customer-formula feeds distributed within this state at such time and place and to such extent as he may deem necessary to determine whether such feeds are in compliance with the provisions of this act. The chemist individually or through his deputy, is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours in order to have access to commercial feeds and customer-formula feeds and to records relating to their distribution.

(b) The method of sampling and analysis shall be those adopted by the chemist from sources such as the journal of the association of official agricultural chemists.

(c) The commissioner, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided solely by the official sample as defined in paragraph (k) of section 2 [3-2013 (k)] and obtained and analyzed as provided for in paragraph (b) of section 9 [this section].

(d) When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the results of the analysis shall be forwarded by the chemist to the distributor and purchaser and registrant. Upon request within ten (10) days the chemist shall furnish to the registrant a portion of the official sample concerned. If the registrant fails to agree with the analysis of the chemist, he may request an umpire who shall be one (1) of a list of not less than three (3) public chemists of recognized ability in feed analysis who shall be named by the chemist. Such umpire analysis shall be made at the expense of the registrant requesting the same. The request for an umpire analysis must be made within ten (10) days after receipt of a portion of the official sample, and the results of the umpire analysis must be mailed to the chemist within twenty (20) days from the date the portion of the official sample is received by the registrant of the feed in question. In case the umpire shall agree more closely with the chemist, the figures of the latter shall be considered correct, and in case the umpire shall agree more closely with the figures of the registrant, then the figures of the registrant shall be considered correct.

History: En. Sec. 9, Ch. 127, L. 1963.

3-2021. Rules and regulations and hearings. (a) For the enforcement of this act, the commissioner is authorized to prescribe and, after public hearing; (1) having notified by mail all registrants on file and (2) having advertised once a week for two (2) consecutive weeks in two (2) newspapers of general circulation; to enforce such rules and regulations relating to the distribution of commercial feeds as he may find necessary to carry into effect the full intent and meaning of this act.

(b) The commissioner shall, before denying the application for a registration or before cancelling or revoking any registration, set the matter down for a hearing and at least ten (10) days prior to the date set for the hearing, shall notify the applicant or distributor in writing, which notice shall contain an exact statement of the charges made and the date and place of the hearing and shall afford the applicant or distributor an opportunity to be heard in person, or by an attorney in reference thereto. The written notice may be served by delivering it personally to the applicant or distributor, or by mailing it by registered mail to the last known business address of the applicant or distributor. The hearing on such charges shall be held before the commissioner at such time and place as the commissioner shall prescribe, and the hearing may be continued from time to time.

History: En. Sec. 10, Ch. 127, L. 1963.

3-2022. Detained commercial feeds. (a) "Withdrawal from sale" orders. When the commissioner or his authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this act or of any of the prescribed regulations under this act, he may issue and enforce a written or printed, "withdrawal from sale" order, warning the distributor not to dispose of the lot of feed in any manner until written permission is given by the commissioner or the district court. The commissioner shall release the

lot of commercial feed so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained within thirty (30) days, the commissioner may begin, or upon request of the distributor shall begin proceedings for condemnation.

(b) Condemnation and confiscation. Any lot of commercial feed not in compliance with said provisions and regulations shall be subject to seizure on complaint of the commissioner to a district court of competent jurisdiction in the area in which said commercial feed is located.

In the event the district court finds the said commercial feed to be in violation of this act and orders the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state; provided, that in no instance shall the disposition of said commercial feed be ordered by the district court without first giving the claimant an opportunity to apply to the district court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with this act.

History: En. Sec. 11, Ch. 127, L. 1963.

3-2023. Penalties. (a) Any person convicted of violating any of the provisions of this act or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent said commissioner or his duly authorized agent in performance of his duty in connection with the provisions of this act, shall be adjudged guilty of a misdemeanor and shall be fined not less than three hundred dollars (\$300.00) or more than five hundred dollars (\$500.00) for the first violation, and not less than three hundred dollars (\$300.00) or more than one thousand dollars (\$1,000.00) for a subsequent violation. In all prosecutions under this act involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the chemist shall be accepted as prima facie evidence of the composition.

(b) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the commissioner reports a violation for such prosecution, an opportunity shall be given the distributor and registrant to be heard before the commissioner pursuant to section 10 [3-2021] of this act.

(c) The commissioner is hereby authorized to apply to the district court of the county or any county wherein a violation has occurred, to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or any rule or regulation promulgated under the act notwithstanding the existence of other remedies of law. Said injunction to be issued without bond.

(d) Any person adversely affected by an act, order or ruling made pursuant to the provisions of this act may within forty-five (45) days thereafter bring action in the district court of the county or any county where the alleged violation giving rise to the commissioner's act, order or ruling occurred, for new trial of the issues bearing upon such act, order or ruling, and upon such trial the court may issue and enforce such

orders, judgments or decrees as the court may deem proper, just and equitable.

History: En. Sec. 12, Ch. 127, L. 1963.

3-2024. Publications. The commissioner may publish at least annually, in such forms as he may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as he may consider advisable, and a report of the results of the analyses of official samples of commercial feeds sold within the state as compared with the analyses guaranteed in the registration and on the label; provided, however, that the information concerning production and use of commercial feeds shall not disclose the operations of any person.

History: En. Sec. 13, Ch. 127, L. 1963.

Separability Clause

Section 14 of Ch. 127, Laws 1963 read "Constitutionality. If any clause, sentence, paragraph, or part of this act shall for any reason be judged invalid by any court of competent jurisdiction, such judgment shall not effect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered."

Repealing Clause

Section 15 of Ch. 127, Laws 1963 read "Repeal. The following sections listed in chapter 20 title 3, Revised Codes of Montana, 1947: 3-2001, 3-2002, 3-2003, 3-2004, 3-2005, 3-2006, 3-2007, 3-2008, 3-2009, 3-2010, 3-2011, pertaining to the distribution of commercial feeds, are hereby repealed."

Effective Date

Section 16 of Ch. 127, Laws 1963 read "Effective date. This act shall take effect and be in force from and after the first day of January, 1964."

CHAPTER 22—POULTRY IMPROVEMENT

Section 3-2201. Powers and duties of commissioner of agriculture.

3-2201.1. Poultry improvement board abolished.

3-2202. Definitions.

3-2203. Board to serve without compensation.

3-2204. Powers and duties.

3-2205. License fees.

3-2207. Disposition of fees.

3-2209. Products to be labeled.

3-2211. May cancel certificates.

3-2212. Violation a misdemeanor.

3-2201. Powers and duties of commissioner of agriculture. The commissioner of agriculture shall have the following powers and duties:

(1) To promote the welfare of the poultry industry in Montana by: (a) determining dependable sources from which poultry may be purchased; (b) co-operating with other state and federal agencies in programs which will advance, promote, and improve the poultry industry in Montana; (c) improving poultry breeding in Montana by certification of the systematic breeding programs of the various hatcheries within the state; (d) co-operating with the Montana livestock sanitary board in controlling and eradicating communicable and infectious diseases of poultry; (e) by systematic inspection of chick dealers, hatcheries and hatching-egg-producers engaged in marketing poultry and poultry products.

(2) To act as the official state agency for Montana in co-operation with the animal and poultry research branch, United States department of agriculture, for the purpose of furthering the objectives and supervising the state's participation in the national poultry improvement plan.

The commissioner of agriculture shall appoint a poultry advisory board consisting of the extension specialist on poultry, Montana state college, and two other members who shall be competent and experienced poultrymen, who shall be the owners or operators of commercial poultry hatcheries. The commissioner may call on this board from time to time for advice in administering the poultry improvement program.

History: En. Sec. 1, Ch. 141, L. 1945; amd. Sec. 1, Ch. 46, L. 1957; amd. Sec. 2, Ch. 59, L. 1961.

Amendment

The 1961 amendment substituted the preliminary paragraph for a paragraph reading, "There is hereby created a board to be known as the 'Montana Poultry Improvement Board.' This board is created for the following purposes:"; deleted

from the end of subd. (2) a sentence reading, "These purposes are to be liberally construed in order that this board may effectuate programs which will be beneficial to the poultry industry in Montana"; and substituted the final paragraph, establishing the advisory board, for a paragraph relating to the composition of the poultry improvement board, for the text of which see parent volume.

3-2201.1. Poultry improvement board abolished. The Montana poultry improvement board is abolished. All records and property, including unexpended appropriations, and any other moneys of the Montana poultry improvement board are transferred to the department of agriculture.

History: En. Sec. 1, Ch. 59, L. 1961.

Title of Act

An act to abolish the Montana poultry improvement board and transfer the duties of said board to the commissioner of agriculture by amending sections 3-2201,

3-2202, 3-2204, 3-2205, 3-2207, 3-2209, 3-2211 and 3-2212, Revised Codes of Montana, 1947, and by amending section 3-2203, Revised Codes of Montana, 1947, providing that said board shall serve without compensation.

3-2202. Definitions. As used in this act unless the context otherwise requires, "commissioner" means the "commissioner of agriculture."

"Breeder" means any person, firm, corporation or association that breeds, handles or deals in chickens, ducks, geese, turkeys or other domestic fowl.

"Hatcher" means any person who is in the business of hatching the eggs of chickens, ducks, geese, turkeys or other domestic fowl by natural or artificial means.

"Distributor" means any person, who is in the business of distributing, selling, or otherwise disposing of to the public of baby, young or other chickens, ducks, geese, turkeys or other domestic fowl, or eggs for hatching purposes including what is known as "over the counter sale" of baby chicks.

"Hatching-egg-producer" means any person who keeps poultry and from such poultry produces eggs for sale or other disposal for hatching purposes.

"Poultry" means chickens, ducks, geese, turkeys or other domestic fowl.

History: En. Sec. 2, Ch. 141, L. 1945; amd. Sec. 3, Ch. 59, L. 1961.

Amendment

The 1961 amendment in the first paragraph, substituted the definition of "commissioner" for a definition reading "board"

means the state agency created by this act to be known as 'The Montana Poultry Improvement Board'; and deleted the former second paragraph reading, "'Person' means any person, firm, corporation or association."

3-2203. Board to serve without compensation. The members of the Montana poultry advisory board shall serve without compensation as such, but the expenses of each, necessarily incurred in the discharge of his duties, shall be paid by the state.

History: En. Sec. 3, Ch. 141, L. 1945; tana poultry advisory board" for "Montana poultry improvement board" and deleted five sentences, for the text of which see parent volume.

Amendment

The 1961 amendment substituted "Mon-

3-2204. Powers and duties. The commissioner is authorized and directed to formulate and adopt a plan or plans whereby hatchery, baby chick and/or poult dealers and hatching-egg-producers shall be inspected by employees of the department of agriculture.

No one shall be refused a license or have his license cancelled under this act unless and until he has been given an opportunity to have a hearing on the matter before the commissioner. The person concerned may obtain same by submitting a written request to the commissioner for such hearing. The commissioner, in setting the time for hearing, shall give at least twenty (20) days' notice of said hearing to such person. The commissioner will adopt reasonable rules and regulations governing the conduct of hearings and shall specifically provide that any person requesting such hearing be permitted to be represented by legal counsel.

The commissioner may adopt a standard breeding plan of accreditation and certification sponsored by the United States department of agriculture or any other plan sponsored by said department and to co-operate with said department in matters of poultry improvement and sanitary provisions. The commissioner is further authorized to prescribe and collect fees for inspection and supervision and to prescribe and furnish labels, bands and certificates of accreditation and certification and such other supplies as may be necessary; and to prescribe and collect fees for the same. The commissioner is further authorized to do such other things as he may deem needful and expedient to improve poultry breeding, poultry sanitation, and practices, and to give effect to this act.

History: En. Sec. 4, Ch. 141, L. 1945; paragraph substituted "employees of the department of agriculture" for "employees of the board or such other person as may be designated by the board"; substituted "commissioner" for "board" elsewhere throughout the section; substituted "a" for "the" before "standard breeding plan" in the first sentence of the third paragraph and deleted from the end of the first sentence of the third paragraph the words, "and indemnity in case of infectious disease."

Amendment

The 1961 amendment deleted three sentences at the beginning of the section providing for employment by the former improvement board of a secretary and executive officer, other employees and legal assistance, for text of which see parent volume; at the end of the first

3-2205. License fees. No person shall hereafter engage in the business of a hatchery, baby chick and/or poult dealer, salesman, or hatching-egg-producer in Montana, without first securing from the commissioner a license to engage therein, which license shall expire on the first day of January of each year, except in cases of flock owners, and in those cases the license shall expire twelve (12) months after the last official pullorum test was conducted by the livestock sanitary board.

Licenses will be issued only upon payment to said commissioner of such annual fees as may be fixed by said commissioner for each of the said occupations, not exceeding, however, the amounts herein set forth, to-wit: (a) hatcheries—under 50,000 capacity—\$10.00; (b) hatcheries—over 50,000 capacity—\$25.00; (c) baby chick and/or poult dealers and salesmen—\$5.00; (d) breeders, hatching-egg-producers, the sum of \$1.00 up to 200 breeder hens; \$2.50 up to 400 breeder hens; \$5.00 up to 800 breeder hens; \$7.50 up to 1,250 breeder hens; \$10.00 over 1,250 breeder hens per year.

History: En. Sec. 5, Ch. 141, L. 1945; amd. Sec. 3, Ch. 46, L. 1957; amd. Sec. 5, Ch. 59, L. 1961.

Amendment

The 1961 amendment substituted "the

livestock sanitary board" for "the board" at the end of the first paragraph; and substituted "commissioner" for "board" or "Montana poultry improvement board" elsewhere throughout the section.

3-2207. Disposition of fees. All fees collected under this act shall be deposited in the state treasury to the credit of the general fund.

History: En. Sec. 7, Ch. 141, L. 1945; amd. Sec. 6, Ch. 59, L. 1961; amd. Sec. 41, Ch. 147, L. 1963.

Amendments

The 1961 amendment rewrote this section to read: "Ninety-five per cent (95%) of all fees collected under this act shall be

deposited in the state treasury to the credit of the Montana poultry improvement fund, and five per cent (5%) of all such fees shall be deposited in the state treasury to the credit of the general fund."

The 1963 amendment again rewrote the section to read as above.

3-2209. Products to be labeled. All poultry and products sold or shipped under the authority of this act shall be uniformly labeled with designs prescribed and furnished by the commissioner, provided that all labeling for testing, approval and accreditation as to disease shall be first approved by the Montana livestock sanitary board.

History: En. Sec. 9, Ch. 141, L. 1945; amd. Sec. 4, Ch. 46, L. 1957; amd. Sec. 7, Ch. 59, L. 1961.

Amendment

The 1961 amendment substituted "commissioner" for "Montana poultry improvement board."

3-2211. May cancel certificates. In his discretion the commissioner may cancel any certificate of accreditation or certification issued under his authority. Likewise the secretary and executive officer of the Montana livestock sanitary board may cancel any certificate of testing, approval or accreditation issued under the authority of his board for violation of this act or any rule or regulation adopted hereunder; and any person, firm, association, partnership or corporation who shall violate any provision of this act or any regulation adopted hereunder shall be guilty of a misdemeanor.

History: En. Sec. 11, Ch. 141, L. 1945; amd. Sec. 8, Ch. 59, L. 1961.

Amendment

The 1961 amendment substituted "commissioner" in the first sentence for the

words "secretary and executive officer of the Montana poultry improvement board" substituted "his authority" in the first sentence for "the authority of his board"; and changed the punctuation so as to divide the section into two sentences.

3-2212. Violation a misdemeanor. Violation of any of the provisions of this act shall be a misdemeanor; and as additional or alternative pen-

alties, the commissioner may revoke any license issued, and may by injunction restrain the continuance of any operations covered by this act.

History: En. Sec. 12, Ch. 141, L. 1945;
amd. Sec. 5, Ch. 46, L. 1957; amd. Sec. 9,
Ch. 59, L. 1961.

Amendment

The 1961 amendment substituted the word "commissioner" for "board."

CHAPTER 23—EGGS AND EGG DEALERS—LICENSE

Section 3-2302. Remittance of fees.

3-2315. Disposal of license fees.

3-2302. (2634.2) Remittance of fees. All license fees shall be remitted to the department of agriculture, dairy division, who shall deposit them in the state treasury to the credit of the general fund.

History: En. Sec. 2, Ch. 189, L. 1931;
amd. Sec. 42, Ch. 147, L. 1963.

posit them in the state treasury to the credit of the general fund" for "disburse them for the enforcement of this act as provided in section 3-2310."

Amendment

The 1963 amendment substituted "de-

3-2315. Disposal of license fees. All funds derived from the licenses herein provided and from the sale of the Montana state egg seal shall be paid to the state treasurer and by him credited to the general fund.

History: En. Sec. 11, Ch. 151, L. 1939;
amd. Sec. 43, Ch. 147, L. 1963.

eral fund" for "revolving fund of the dairy division of the department of agriculture, labor and industry."

Amendment

The 1963 amendment substituted "gen-

CHAPTER 24—DAIRIES AND DAIRY PRODUCTS—REGULATION OF PRODUCTION AND SALE

Section 3-2407. Keeping of samples.

3-2476. "Ice cream" defined—ingredients—standards.

3-2407. (2620.7) Keeping of samples. All persons purchasing milk or cream, for manufacture, sale or shipment, and paying for the same on the basis of the butter fat contained therein as determined by the Babcock test, shall immediately upon receiving such milk or cream, take a representative sample thereof. Such samples shall not be less than two (2) ounces avoirdupois in weight and shall be immediately transferred to a clean and dry sample jar and properly sealed to prevent evaporation or the escape of any of the contents thereof. All samples taken shall be plainly marked or labeled and such mark or label shall be entered on the records of the purchaser to correspond with the name of the person from whom the purchase was made and such record shall also show the weight of the milk or cream. Such samples shall then be protected from the extremes of heat and cold until five (5) o'clock P. M. of the following day, unless the next day be Sunday or any other holiday in which event the samples shall be held until five (5) o'clock P. M. of the next day following such holiday. During the period that samples are so held, after the making of the test by the person taking same, they shall be opened only in the

presence of the commissioner of agriculture, or his authorized agent. Nothing in this section shall prohibit the weighing and sampling of milk from farm bulk milk tanks, or the use of composite samples of milk according to rules and regulations adopted by the commissioner of agriculture, in the best interests of milk producers, consumers and processors and for the protection of their mutual interests.

History: En. Sec. 7, Ch. 93, L. 1929; amd. Sec. 1, Ch. 45, L. 1961.

Amendment

The 1961 amendment deleted a former second sentence, which read: "If any of said milk or cream shall be left on hand at any milk or cream buying or collecting stations, the operator of such stations shall likewise take a representative sample of the same"; deleted from the end of the

present third sentence the words, "if any, left on hand after shipment is made"; deleted "labor and industry" after "commissioner of agriculture" in the present fifth sentence; and added the last sentence.

Repealing Clause

Section 2 of Ch. 45, Laws 1961 repealed all acts and parts of acts in conflict therewith.

3-2476. "Ice cream" defined—ingredients—standards. (a) Ice cream is the food prepared by freezing, while stirring, a pasteurized mix composed of one or more of the optional dairy ingredients specified in subsection (b) of this section, sweetened with one or more of the optional sweetening ingredients specified in subsection (c) of this section, flavored with one or more of the optional flavoring ingredients specified in subsection (d) of this section. Water may be added and one or more of the optional egg ingredients specified in subsection (e) may be used; one or more of the optional stabilizing ingredients specified in subsection (f) may be used; one or more of the optional acidity standardizing ingredients specified in subsection (g) may be used subject to the conditions set forth in subsections (e), (f) and (g), as the case may be.

Harmless coloring may be added. The mix may be seasoned with salt and may be homogenized. The kind and quantity of optional dairy ingredients used, and the content of milk fat and total milk solids shall be such that the weight of milk fat and total milk solids shall be not less than 10% and 20% respectively of the weight of the finished ice cream; except that when one or more of the optional flavoring ingredients specified in subsection (d), (4), (5), (6), (7) or (8) are used, then the weight of milk fat and total milk solids shall be not less than 10% and 20% respectively, except for such reduction in milk fat and in total milk solids as is due to the addition of one or more of the optional ingredients specified in subsection (d), (4), (5), (6), (7) or (8), but in no case shall it contain less than 9% of milk fat nor less than 16% of total milk solids. Ice cream shall contain not less than 1.6 pounds of total food solids per gallon and shall weigh not less than four and one-half (4½) net pounds per gallon.

(b) to (g). * * * [Same as parent volume.] *ice PV*

History: En. Sec. 1, Ch. 172, L. 1953; amd. Sec. 1, Ch. 20, L. 1963.

quired weight of ice cream, as specified at the end of subsection (a), from 4¼ to 4½ pounds per gallon.

Amendment

The 1963 amendment increased the re-

CHAPTER 25—MONTANA QUALITY LABEL—USE ON INSPECTED AGRICULTURAL AND FOOD PRODUCTS

Section 3-2503. Procurement and use of labels—information concerning—disposal of moneys.

3-2503. Procurement and use of labels—information concerning—disposal of moneys. (a) The commissioner may cause to be made, printed, or otherwise prepared, from time to time, such quantity of labels, tags, and seals with the Montana quality label printed, lithographed, inscribed, engraved or impressed thereon as will be sufficient to supply the demand therefor; and he may furnish such labels, tags, and seals at reasonable prices to any producer, processor, packer or dresser who has availed himself of the said continuous official inspection service. Nothing in this act, however, shall be construed to preclude the commissioner from permitting, under the rules and regulations by him prescribed, any such producer, processor, packer or dresser to make or prepare, or to cause to be made or prepared, the labels, tags, or seals to be used upon his own product, or to print, stamp or otherwise placed or cause to be placed the Montana quality label, upon such products or containers thereof which have been subject to continuous inspection; provided that in any case such labels, tags, seals, stamps or other devices shall be of such design as the commissioner, may from time to time determine. (b) The commissioner is further authorized, in cooperation with the United States department of agriculture and/or otherwise, to make use of any available and appropriate means to disseminate information concerning the Montana quality label and the products which may lawfully bear it, and to popularize the use thereof. (c) All moneys derived from the furnishing of said labels, tags, and seals, or from permitting the use in any other manner of the Montana quality label shall be deposited in the state treasury to the credit of the general fund.

History: En. Sec. 3, Ch. 290, L. 1947; amd. Sec. 44, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "be deposited in the state treasury to the

credit of the general fund" for "constitute a fund to defray the cost of preparing and furnishing such labels, tags, and seals and the cost of such dissemination and popularization" at the end of subd. (c).

CHAPTER 27—CONTROL OF NOXIOUS RODENT PESTS

Section 3-2704. Purchase and sale of rodent control supplies.

3-2703. Repealed.**Repeal**

This section (Sec. 3, Ch. 136, L. 1949), making an appropriation for control of

noxious rodent pests, was repealed by Sec. 242, Ch. 147, Laws 1963.

3-2704. Purchase and sale of rodent control supplies. In addition to the expenditures hereinbefore authorized the state of Montana livestock commission is authorized to purchase rodent control supplies, including rodent baits, for the use of cooperating governmental agencies, and counties, associations, corporations, or individuals in the control of noxious rodents and related animals, and to make these supplies and baits available to such co-operators at approximate cost.

History: En. Sec. 4, Ch. 136, L. 1949; from the end of this section which created a rodent control fund. For previous text, amd. Sec. 105, Ch. 147, L. 1963. see parent volume.

Amendment

The 1963 amendment deleted a sentence

CHAPTER 28—RURAL REHABILITATION

Section 3-2803. Administration of trust assets.

3-2803. Administration of trust assets. Funds and the proceeds of the trust assets which are not authorized to be administered by the secretary of agriculture of the United States under section 3-2802 shall be received by the commissioner of agriculture, and paid by him to the state treasurer for deposit in the federal and private grant clearance fund and used for expenditure or obligation by the department of agriculture for the purpose of section 3-2802, or for use for such of the rural rehabilitation purposes permissible under the charter of the now dissolved Montana rural rehabilitation corporation as may from time to time be agreed upon between the commissioner of agriculture and the secretary of agriculture of the United States, subject to the applicable provisions of said Public Law 499.

History: En. Sec. 3, Ch. 112, L. 1951; amd. Sec. 45, Ch. 147, L. 1963.

Compiler's Note

Public Law 499, referred to in this section will be found in the United States Code, tit. 40, secs. 440 to 444.

Amendment

The 1963 amendment substituted "the

federal and private grant clearance fund and used" for "a special fund to be known as the 'Montana Farm Loan Fund' which fund shall be maintained as a revolving fund"; deleted a last sentence reading: "The state treasurer and state auditor are hereby directed to open and maintain accounts upon their respective books for said fund"; and made minor changes in phraseology.

TITLE 4—ALCOHOLIC BEVERAGES

- Chapter 1. State liquor control act of Montana—licensing—sale of alcoholic beverages by state liquor stores, 4-104, 4-105, 4-108, 4-172, 4-173.
2. State liquor control act of Montana (continued)—interdiction and other enforcement provisions—finance—miscellaneous, 4-229.
3. Montana beer act—licensing sale of beer under supervision of state liquor control board, 4-303, 4-317, 4-324, 4-329, 4-332, 4-333, 4-341, 4-349.
4. Montana retail liquor license act—sales by licensees of board, 4-403, 4-409.1, 4-414.

CHAPTER 1—STATE LIQUOR CONTROL ACT OF MONTANA— LICENSING—SALE OF ALCOHOLIC BEVERAGES BY STATE LIQUOR STORES

- Section 4-104. Montana liquor control board—creation—qualifications—term.
- 4-105. Liquor control board—compensation—meetings.
- 4-108. Salaries of state liquor administrator and other employees—duties of assistant administrator.
- 4-172. Bottle clubs prohibited.
- 4-173. Violation—penalty—abatement as nuisance.

4-104. (2815.63) Montana liquor control board—creation—qualifications—term. The "Montana Liquor Control Board" shall consist of five (5) members not more than three (3) of whom shall be of the same political party to be appointed by the governor, with the advice and consent of the senate, and each of said members shall have been a resident of the state of Montana for a period of five (5) years and a citizen of the United States and of the state of Montana. Each member of the Montana liquor control board shall hold office for a term of four (4) years and until his successor is appointed and qualified, provided, however, that in the appointment of the members of the first board to be appointed, under the terms of this act, one (1) of such members shall be appointed to hold office for a term of two (2) years, and two (2) of such members shall be appointed to hold office for a term of four (4) years, and the two (2) additional members of said board provided under the terms of this act shall be appointed to hold office for a term of four (4) years; and provided, further, that the members of said board may be removed from office at any time by the governor, for cause. The governor shall designate the term of service of each member first appointed, so that the term of one (1) shall end March 1, 1939, and the term of two (2) shall expire March 1, 1941. Each succeeding member shall hold his office for a term of four (4) years and until his successor shall be appointed and shall have qualified. Succeeding appointments, except when made to fill a vacancy, shall be made on or before the 31st day of January during the biennial session of the legislature, next preceding the commencement of the term for which the appointment is made.

History: En. Sec. 4 (part), Ch. 105, L. 1933; amd. Sec. 1 (part), Ch. 30, L. 1937; amd. Sec. 1 (part), Ch. 243, L. 1947; amd. Sec. 1 (part), Ch. 140, L. 1949; amd. Sec. 1 (part), Ch. 183, L. 1951; amd. Sec. 1, Ch. 268, L. 1963.

Amendment

The 1963 amendment increased the size of the board from three to five members; increased the maximum number of members from one political party from two to three; inserted in the second sentence the

clause reading, "and the two (2) additional members of said board provided under the terms of this act shall be appointed to hold office for a term of four (4) years"; deleted a proviso pertaining to the time for nomination of the first members of the board; and made a minor change in phraseology.

Effective Date

Section 2 of Ch. 268, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 15, 1963.

4-105. Liquor control board—compensation—meetings. Each of the members of the Montana liquor control board shall receive, as compensation for his official services, the sum of twenty dollars (\$20) per diem for each day actually engaged in the duties of his office, including his time of travel between his home and place of employment of such duties, provided, however, that the maximum amount each member of commission shall receive for per diem shall not exceed one thousand five hundred dollars (\$1,500) per annum, together with the traveling expenses while away from home in the performance of the duties of his office. The board shall hold its meetings at the city of Helena or at such other places as may be designated by the board.

History: En. Sec. 4 (part), Ch. 105, L. 1933; amd. Sec. 1 (part), Ch. 30, L. 1937; amd. Sec. 1 (part), Ch. 243, L. 1947; amd. Sec. 1 (part), Ch. 140, L. 1949; amd. Sec. 1 (part), Ch. 183, L. 1951; amd. Sec. 1, Ch. 235, L. 1957; amd. Sec. 1, Ch. 151, L. 1963.

Amendment

The 1963 amendment increased the compensation of board members from \$15 to \$20 per diem.

4-108. (2815.63) Salaries of state liquor administrator and other employees—duties of assistant administrator. The board shall fix the following salaries of its employees at such sums as it deems advisable, to-wit: The salary of the state liquor administrator in a sum not exceeding nine thousand dollars (\$9,000) per year; the salary of the assistant state liquor administrator in a sum not exceeding seven thousand two hundred dollars (\$7,200) per annum: the salaries of the supervisors of the accounting department, the data processing department and the license department in a sum not exceeding six thousand six hundred dollars (\$6,600) per annum each; the salary of the supervisor of the warehouse department in a sum not exceeding six thousand dollars (\$6,000) per annum; the salaries of the purchasing agent, the traffic manager, the assistant supervisor of the data processing department, the assistant supervisor of the accounting department, store auditors and field inspectors in a sum not exceeding five thousand seven hundred sixty dollars (\$5,760) per annum each; the salary of a vendor of a "Class A" store in a sum not exceeding five thousand eight hundred seventy-five dollars (\$5,875) per annum; the salary of one (1) assistant vendor of a "Class A" store in a sum not exceeding five thousand two hundred fifty dollars (\$5,250) per annum; the salary of any other employee of a "Class A" store in a sum not exceeding four thousand nine hundred fifty dollars (\$4,950) per annum; the salary of a vendor of a "Class B" store in a sum not exceeding five thousand dollars (\$5,000) per annum; the salary of an assistant vendor and any other employee of a "Class B" store in a sum not exceeding four thousand one hundred twenty-five dollars (\$4,125) per annum; the salary or com-

pensation of a vendor of a "Class C" store in a sum not exceeding four thousand five hundred dollars (\$4,500) per annum; the salary of an assistant vendor and any other employee of a "Class C" store in a sum not exceeding the sum of three thousand seven hundred fifty dollars (\$3,750) per annum; the salary of any other employee of the board in the sum not exceeding six thousand dollars (\$6,000) per year. The volume of the individual store sales shall be taken into consideration in fixing the salary of store vendors, assistant vendors and employees.

The assistant state liquor administrator shall exercise such powers and perform such duties as the board may prescribe.

History: En. Sec. 4 (part), Ch. 105, L. 1933; amd. Sec. 1 (part), Ch. 30, L. 1937; amd. Sec. 1 (part), Ch. 243, L. 1947; amd. Sec. 1 (part), Ch. 140, L. 1949; Sec. 1 (part), Ch. 183, L. 1951; amd. Sec. 2, Ch. 235, L. 1957; amd. Sec. 2, Ch. 151, L. 1963.

Amendment

The 1963 amendment increased the maximum salary of the state liquor administrator from \$7,000 to \$9,000 and that of the assistant state liquor administrator from \$5,600 to \$7,200; changed the chief accountant's title to supervisor of the accounting department and increased his maximum salary from \$5,500 to \$6,600; changed the I. B. M. office superintendent's title to supervisor of the data processing department and increased his maximum salary from \$4,900 to \$6,600; inserted provisions for salaries of the supervisor of the license department, the supervisor of the warehouse department, the purchasing agent, the traffic manager, the assistant supervisor of the data processing department, the assistant supervisor

of the accounting department, store auditors, and field inspectors; and increased the maximum salaries of vendors in Class A stores from \$4,700 to \$5,875, those of assistant vendors in Class A stores from \$4,200 to \$5,250, those of other employees of Class A stores from \$3,960 to \$4,950, those of vendors in Class B stores from \$4,000 to \$5,000, those of assistant vendors and other employees in Class B stores from \$3,300 to \$4,125, those of vendors in Class C stores from \$3,600 to \$4,500, those of assistant vendors and other employees of Class C stores from \$3,000 to \$3,750, and those of other employees of the board from \$4,800 to \$6,000.

Repealing Clause

Section 3 of Ch. 151, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 151, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

4-159. (2815.113) Persons not to consume liquor, etc.

Liability of Tavern Keeper

Subd. (2) of this section does not furnish the basis for holding a tavern keeper liable for injury from the acts of an

intoxicated patron in the absence of evidence that the tavern keeper knew of the intoxication. *Nevin v. Carlasco*, 139 M 512, 365 P 2d 637, 639.

4-167. (2815.121) Drunkenness when and where, etc.

Civil Liability

This section does not furnish the basis for holding a tavern keeper liable for injury from the acts of an intoxicated

patron in the absence of evidence that the tavern keeper knew of the intoxication. *Nevin v. Carlasco*, 139 M 512, 365 P 2d 637, 639.

4-172. Bottle clubs prohibited. The operation of beer or liquor or alcoholic beverage bottle clubs is hereby prohibited by any person, persons, partnership, firm, corporation or association. A bottle club is hereby defined as any person, persons, partnership, firm, corporation or association maintaining premises, not licensed for the sale of beer or liquor, for a fee or other consideration, including the sale of food, mixes,

ice, or any other fluids for alcoholic liquors, or otherwise furnishing premises for such purposes and from which they would derive revenue.

History: En. Sec. 1, Ch. 200, L. 1959; amd. Sec. 1, Ch. 109, L. 1963.

change in phraseology in the first sentence and added the second sentence.

Title of Act

An act to prohibit any person, persons, partnership, firm, corporation or association from operating a beer, liquor or other alcoholic beverage, bottle club, and providing a penalty therefor; repealing all acts and parts of acts in conflict herewith; and providing for an effective date.

Repealing Clause

Section 2 of Ch. 109, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 109, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

Amendment

The 1963 amendment made a minor

4-173. Violation—penalty—abatement as nuisance. A violation of this act shall be deemed a nuisance and may be abated, and any person, persons, partnership, firm, corporation or association found guilty of violating this section shall be punished by fine of not more than five hundred dollars (\$500.00), or by six (6) months in the county jail, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 200, L. 1959.

Effective Date

Section 4 of Ch. 200, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 10, 1959.

Repealing Clause

Section 3 of Ch. 200, Laws 1959 repealed all acts and parts of acts in conflict therewith.

CHAPTER 2—STATE LIQUOR CONTROL ACT OF MONTANA (continued)— INTERDICTION AND OTHER ENFORCEMENT PROVISIONS— FINANCE—MISCELLANEOUS

Section 4-229. Disposition of money received.

4-201. (2815.126) Interdiction—order of—effect—disposal of liquor, etc.

References

Cited in State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P 2d 906.

4-202. (2815.127) Filing order of interdiction—cancellation, etc.

References

Cited in State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P 2d 906.

4-203. (2815.128) Revocation of order of interdiction—restoration, etc.

References

Cited in State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P 2d 906.

4-204. (2815.129) Application and setting aside order, etc.

References

Cited in State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P 2d 906.

4-205. (2815.130) Penalty for violations of act.

Jurisdiction of Prosecutions

The provisions of the retail liquor license act (sections 4-401 to 4-441) control

with respect to prosecution of a licensee for making a sale to an interdicted person and a justice court had jurisdiction to act

upon a complaint charging defendant with a sale of liquor to an interdicted person. State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P 2d 906.

4-229. (2815.154) Disposition of money received. All moneys received from the sale of liquor at the state liquor stores shall be deposited in the revolving fund in the state treasury to the credit of the board. The board is hereby authorized to purchase liquor from moneys deposited to its account in the revolving fund. The board shall transfer from its account in the revolving fund to its account in the earmarked revenue fund such moneys which are necessary to pay its administrative expense, subject to the limits imposed by legislative appropriation. No obligation created or incurred by the board shall ever be, or become, a debt or claim against the state of Montana, but shall be payable by the board solely from funds derived from the operation of state liquor stores. The board shall pay into the state treasury to the credit of the general fund the receipts from all taxes and licenses by it collected, and also the net proceeds from the operation of state liquor stores.

History: En. Sec. 94, Ch. 105, L. 1933; amd. Sec. 1, Ch. 54, L. 1939; amd. Sec. 211, Ch. 147, L. 1963.

Amendment

The 1963 amendment completely re-wrote this section. For previous text, see parent volume.

4-231. (2815.156) Repealed.

Repeal

This section (Sec. 96, Ch. 105, L. 1933), relating to a reserve fund to be created

from the profits, was repealed by Sec. 242, Ch. 147, Laws 1963.

4-240. License tax on liquor—amount—distribution of proceeds.

References

Cited in Hill v. Billings, 134 M 282, 328 P 2d 1112, 1116.

CHAPTER 3—MONTANA BEER ACT—LICENSING SALE OF BEER UNDER SUPERVISION OF STATE LIQUOR CONTROL BOARD

Section 4-303. Closing hours for licensed retail beer establishments.

4-317. Licenses of brewers—persons to whom brewers may sell beer—barrelage tax.

4-324. Tax on imported beer—computation in case of barrels of capacity other than thirty-one gallons.

4-329. Sale of beer by retailer for consumption off premises.

4-332. Special permits to sell beer—application and issuance—fee.

4-333. Issuance of retail beer licenses—limit on number of—off-premises beer licenses—lapse and cancellation.

4-341. Fees for licenses—expiration dates—regulation by cities and towns.

4-349. Brewers and wholesalers not to supply fixtures, etc., to retailers, except as specified—brewers not to be interested in retailer financially.

4-303. Closing hours for licensed retail beer establishments. Hereafter all licensed establishments wherein beer as defined by subsection (b) of section 4-302, is sold, offered for sale or given away at retail shall be closed during the following hours:

(a) Sunday from two A. M. to one P. M.;

(b) On any other day between two A. M. and eight A. M.;

(c) On any day of a biennial general or primary election at which state and national officers are elected, during the hours when the polls

are open, but not upon the day of any other election; provided, however, that when any municipal incorporation has by ordinance further restricted the hours of sale of beer, then the sale of beer is prohibited within the limits of any such city or town during the times such sale is prohibited by this act and in addition thereto during the hours that it is prohibited by such ordinance.

History: En. Sec. 1, Ch. 161, L. 1943; amd. Sec. 1, Ch. 162, L. 1959.

words "election at which state and national officers are elected"; inserted the words "but not upon the day of any other election" and deleted a provision calling for the closing of establishments at special bond elections.

Amendment

The 1959 amendment in subd. (c) inserted the word "biennial"; inserted the

4-317. (2815.22) Licenses of brewers—persons to whom brewers may sell beer—barrelage tax. (1) Any brewer duly licensed as such by the United States of America, who manufactures beer in the state of Montana, upon payment of the annual license fee imposed by section 4-341 and upon presenting satisfactory evidence to the board as required by section 4-310, shall be licensed by the board in accordance with the provisions of this act and such regulations as may be prescribed by the board, to sell and deliver:

(a) Beer to a vendor;

(b) Beer to any licensees who are entitled to purchase beer from a brewer under this act; or

(c) Beer to the public, subject to the limitations and restrictions contained in this act; or to do any one or more of such acts of sale and delivery of beer.

(2) In addition to the annual license tax imposed by section 4-341, a tax of one dollar and fifty cents (\$1.50) per barrel of thirty-one (31) gallons is hereby levied and imposed on each and every barrel of beer sold by any duly licensed brewer who manufactures beer in the state of Montana, which said barrelage tax shall be due at the end of each month and shall be payable with the brewer's monthly return or statement required to be made to the board under the provisions of section 4-311.

History: En. Sec. 13, Ch. 106, L. 1933; amd. Sec. 4, Ch. 46, Ex. L. 1933; amd. Sec. 4, Ch. 166, L. 1951; amd. Sec. 1, Ch. 135, L. 1959.

Amendment

The 1959 amendment increased the barrelage tax from \$1.00 to \$1.50 per barrel.

4-324. (2815.29) Tax on imported beer—computation in case of barrels of capacity other than thirty-one gallons. A tax of one dollar and fifty cents (\$1.50) per barrel of thirty-one (31) gallons, is hereby levied and imposed on each and every barrel of beer manufactured out of this state and sold herein by any wholesaler, which said tax shall be due at the end of each month from said wholesaler, upon any such beer so sold by him during that month. As to any beer imported and sold in containers other than barrels, or in barrels of more or less capacity than thirty-one (31) gallons, the quantity content shall be ascertained and computed by the board in determining the amount of tax due, as herein provided for.

History: En. Sec. 20, Ch. 106, L. 1933; amd. Sec. 8, Ch. 46, Ex. L. 1933; amd. Sec. 2, Ch. 135, L. 1959.

Amendment

The 1959 amendment increased the barrelage tax from \$1.00 to \$1.50 per barrel.

Repealing Clause

Section 3 of Ch. 135, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 135, Laws 1959 read "This act shall be in full force and effect from and after May 1st, 1959."

4-329. (2815.32) Sale of beer by retailer for consumption off premises.

It shall be lawful for such retailer to sell or furnish beer to the public with intent that such beer shall be taken away from the premises of such retailer for consumption off the premises of such retailer.

History: En. Sec. 30, Ch. 106, L. 1933; amd. Sec. 10, Ch. 46, Ex. L. 1933; amd. Sec. 1, Ch. 177, L. 1961.

Repealing Clause

Section 2 of Ch. 177, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1961 amendment at end of section deleted the words "and in quantities not to exceed five (5) gallons."

4-332. (2815.35) Special permits to sell beer—application and issuance—fee. (1) Any fair association or corporation maintaining or operating a place for the exhibition of livestock or agricultural or horticultural products, or for the exhibition of races or rodeos, charging an admission fee thereto, shall in the discretion of the board be entitled to a special permit to sell beer to the patrons of such exhibition to be consumed within the exhibition enclosure.

The application of any such association or corporation shall describe the location of such enclosure wherein such exhibition is held, the nature of such exhibition, the period when it is contemplated that the same will be held. Such application shall be accompanied by the amount of the permit fee hereinafter provided.

The permit to such fair association or corporation shall be a special permit, but shall not authorize the sale of beer except starting one (1) day in advance of the regular period when exhibitions for which a fee is charged are being held upon such grounds and during the exhibition period described in such application, and for one (1) day thereafter.

The permit fee shall be at the rate of ten dollars (\$10.00) per day for each day beer is to be sold, or sold but in no event less than the sum of twenty-five dollars (\$25.00), hereby fixed as the minimum fee for such permit.

(2) Any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, not otherwise licensed under this act, shall in the discretion of the board, without notice or hearing as provided in section 4-407.1, be entitled to a special permit to sell beer at such post or lodge, to members and their guests only, to be consumed within the hall or building of such post or lodge.

The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a permit fee of five dollars (\$5.00).

The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the board shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year.

History: En. Sec. 13, Ch. 46, Ex. L. 1933; amd. Sec. 1, Ch. 235, L. 1963.

Amendment

The 1963 amendment designated the previous text as subsection (1) and added subsection (2).

4-333. (2815.36) Issuance of retail beer licenses—limit on number of—off-premises beer licenses—lapse and cancellation.

(1)(a), (b) and (2). * * * [Subdivisions (1)(a), (b) and (2), same as parent volume.]

(3) From and after February 1, 1949, any retail license issued pursuant to this act (including any retail license to sell beer for off-premises consumption), not actually used in a going establishment for a period of ninety (90) days, shall automatically lapse. Upon determining the fact of nonuser for such period the board shall cancel such license of record and no portion of the fee paid therefor shall be refundable. The provisions of this subsection shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, resort, park hotel, tourist facility or like business, provided such licensee has secured written authority from the board to close his licensed premises for a specified period of greater than ninety (90) days' duration, and providing further that should the liquor control board determine that such lapse was reasonably beyond the control of the licensee, then the lapse provision set out above shall not apply.

History: En. Sec. 14, Ch. 46, Ex. L. 1933; amd. Sec. 1, Ch. 225, L. 1947; amd. Sec. 1, Ch. 165, L. 1949; amd. Sec. 1, Ch. 55, L. 1955; amd. Sec. 1, Ch. 205, L. 1959.

Repealing Clause

Section 2 of Ch. 205, Laws 1959, repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment added the proviso at the end of subd. 3.

Effective Date

Section 3 of Ch. 205, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 10, 1959.

4-341. (2815.44) Fees for licenses — expiration dates — regulation by cities and towns. Each licensee, under the provisions of this act, shall pay an annual license fee as follows:

Each "brewer," wherever located, whose product is sold or offered for sale within the state, five hundred dollars (\$500.00);

Each "wholesaler" four hundred dollars (\$400.00);

Each "retailer" two hundred dollars (\$200.00);

Any unit of a nationally chartered veterans organization fifty dollars (\$50.00);

Each "vehicle" being a common carrier of passengers, or other persons operating buffet and dining cars for such common carrier, twenty-five dollars (\$25.00).

All licenses issued in any year shall expire on the 30th day of June at midnight of such year. A transfer of any such license may be made on application to the Montana liquor control board with the consent of the said board provided that said transferee shall qualify under this act. The cities and incorporated towns may enact ordinances defining certain areas in said cities or towns where beer may or may not be sold

providing that said ordinance does not affect the limit of retail beer licenses which shall be issued by the Montana liquor control board based upon the population of the city or town and said city or town shall file a certified copy of said ordinance with the Montana liquor control board; the cities and towns may also impose a fee on a licensee of the board for selling beer at retail in the city or town providing said fee shall be reasonable and not in excess of the amount imposed by the state. This act shall not be construed or interpreted so as to repeal, amend, modify, change, or alter any provisions of the Montana beer act which require beer manufactured outside of the state of Montana and shipped into Montana to be consigned to and shipped to a licensed wholesaler and by him unloaded into his warehouse or sub-warehouse in Montana.

History: En. Sec. 45, Ch. 106, L. 1933; amd. Sec. 15, Ch. 46, Ex. L. 1933; amd. Sec. 2, Ch. 246, L. 1947; amd. Sec. 1, Ch. 122, L. 1963.

Amendment

The 1963 amendment substituted the words "wherever located, whose product is sold or offered for sale within the state, five hundred dollars (\$500.00)" for the words "seven hundred fifty dollars (\$750.00)" in the first paragraph; and added the fourth sentence to the second paragraph.

Separability Clause

Section 2 of Ch. 122, Laws 1963 read "If any word, phrase, clause, figure, sentence, subdivision, or section of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, such determination shall not affect the remaining portions of this act."

Repealing Clause

Section 3 of Ch. 122, Laws 1963 repealed all acts and parts of acts in conflict therewith.

4-342. (2815.45) Denial of application for license or renewal, etc.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see Table A, M. R. Civ. P. (sec. 93-2711-7).

4-349. (2815.51) Brewers and wholesalers not to supply fixtures, etc., to retailers, except as specified—brewers not to be interested in retailer financially. (a) It shall be unlawful for any brewer or wholesaler to lease, furnish, give or pay for any premises, furniture, fixtures, equipment, signs, or any other advertising matter or any other property to any retail licensee, used or to be used in the dispensation of beer in and about the interior or exterior of the place of business of any licensed retailer or furnish, give or pay for any repairs, improvements, painting or decorating on or within such premises; provided, however, that it shall be lawful for a brewer or wholesaler to furnish, give or loan to a retail licensee:

1. Bottle openers, can openers and trays, with or without advertising matter thereon;

2. Advertising matter or novelties, of a value of not to exceed fifteen dollars (\$15.00) in any calendar year, to any one (1) retailer for display use on the interior of said retailer's place of business; and

3. Not more than two (2) illuminated or electrical signs, each of not more than three hundred (300) square inches in area, and both not in excess of fifty dollars (\$50.00) in value, exclusive of installation charges,

which signs may bear the name, brand name, trade name, trade-mark or other designation indicating the name of the manufacturer, and the place of manufacture, of beer, for display by the retail licensee on and within the interior of his place of business, or in the windows inside the place of business of the licensed retailer, and only if the particular brand of beer so advertised on such signs is actually available for sale on the licensee's premises, at the time of such display.

(b) No brewer or wholesaler shall advance or loan money to, or furnish money for, or pay for or on behalf of any retailer, for any license or tax which may be required to be paid for any retailer, and no brewer or wholesaler shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer, as herein defined. A brewer or wholesaler shall be deemed to have such a financial interest within the meaning of this section if (1) such brewer or wholesaler owns or holds any interest in, or a lien or mortgage against the retailer or his premises; or (2) if such brewer or wholesaler is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from, or to the other; (3) if any retailer holds an interest as a stockholder, or otherwise, in the business of the wholesaler.

(c) No sale or delivery of beer shall be made to any retail licensee, except for cash paid within seven (7) days after the delivery thereof, and in no event shall any brewer or wholesaler extend more than seven (7) days' credit on account of such beer to a retail licensee, nor shall any retail licensee accept or receive delivery of such beer without agreement to pay in cash therefore within seven (7) days from delivery thereof. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this act. Any extension or acceptance of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of both brewers, wholesalers and retail licensees involved in violation hereof shall be suspended or revoked, as determined by the board in its discretion.

History: En. Sec. 18, Ch. 46, Ex. L. 1933; amd. Sec. 10, Ch. 166, L. 1951; amd. Sec. 1, Ch. 51, L. 1955; amd. Sec. 1, Ch. 110, L. 1959.

Repealing Clause

Section 2 of Ch. 110, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment added the last sentence to subd. (b).

CHAPTER 4—MONTANA RETAIL LIQUOR LICENSE ACT—SALES BY LICENSEES OF BOARD

Section 4-403. Issuance of retail liquor licenses—limit on number of licenses—retail wine licenses—lapse and cancellation.

4-409.1. Special permits to sell liquor—application and issuance—fee.

4-414. Hours for sale of liquor.

4-401. Declaration of policy as to retail sale of liquor.

References

Cited in *Gill v. Rafn*, 133 M 505, 326 P 2d 974; *State ex rel. Geschwender v. La Rowe*, 136 M 591, 341 P 2d 906.

4-402. Definitions.**References**

Cited in State ex rel. Geschwender v.
La Rowe, 136 M 591, 341 P 2d 906.

4-403. Issuance of retail liquor licenses—limit on number of licenses—retail wine licenses—lapse and cancellation. (1) Except as otherwise provided by law, a license to sell liquor at retail in accordance with the provisions of this act and the regulations of the Montana liquor control board, may be issued to any person who shall be approved by a majority of the board as a fit and proper person to sell liquor; provided, that the number of retail liquor licenses which the board may issue shall be determined as follows:

(a) The number of retail liquor licenses that the board may issue for premises situated within incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by Congress, to-wit: In incorporated towns of five hundred (500) inhabitants or less and within a distance of five (5) miles from the corporate limits of such towns, not more than two (2) retail liquor licenses; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over three thousand (3000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities and towns, three (3) retail liquor licenses for the first one thousand (1000) inhabitants and one (1) retail liquor license for each additional one thousand (1000) inhabitants; in incorporated cities of over three thousand (3000) inhabitants and within a distance of five (5) miles from the corporate limits thereof, five (5) retail liquor licenses for the first three thousand (3000) inhabitants and one (1) retail liquor license for each additional one thousand five hundred (1500) inhabitants. The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of five (5) miles from the corporate limits thereof, shall govern the number of retail liquor licenses that may be issued for use within such cities and towns and within a distance of five (5) miles from the corporate limits thereof; provided, however, that where two (2) or more incorporated municipalities are situated within a distance of five (5) miles from each other, the total number of retail liquor licenses that may be issued for use in both of such municipalities and within a distance of five (5) miles from their respective corporate limits, shall be determined on the basis of the combined populations of both of such municipalities and shall not exceed the foregoing limitations. The said distance of five (5) miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town. Retail liquor licenses of issue on the date of the passage and approval of this act and which are in excess of the foregoing limitations shall be renewable, but no new licenses shall be issued in violation of such limitations; provided that such limitations shall not

prevent the issuance of a nontransferable and nonassignable (as to ownership only) retail liquor license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, if such veterans' or fraternal organization has been in existence for a period of five (5) years or more prior to January 1, 1949. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the board may issue; provided that no retail license may be issued by the board for any premises situated within any zone of a city or town wherein the sale of liquor is prohibited by ordinance, a certified copy of which has been filed with the board. The board shall have discretion to deny the issuance of a retail license if it shall determine that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(b) The number of retail liquor licenses that the board may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of five (5) miles from the corporate limits thereof, shall be not more than one (1) license for each seven hundred fifty (750) population of the county, after excluding the population of incorporated cities and incorporated towns in such county.

(2) From and after February 1, 1949, any retail license issued pursuant to this act not actually used in a going establishment for a period of ninety (90) days, shall automatically lapse. Upon determining the fact of nonuser for such period the board shall cancel such license of record and no portion of the fee paid therefor shall be refundable. The provisions of this subsection shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, park hotel, tourist facility or like business, provided such licensee has secured written authority from the board to close his licensed premises for a specified period of greater than ninety (90) days' duration, and providing further that should the liquor control board determine that such lapse was reasonably beyond the control of the licensee, then the lapse provision set out above shall not apply.

History: En. Sec. 3, Ch. 84, L. 1937; amd. Sec. 1, Ch. 226, L. 1947; amd. Sec. 1, Ch. 164, L. 1949; amd. Sec. 1, Ch. 144, L. 1951; amd. Sec. 1, Ch. 56, L. 1955; amd. Sec. 1, Ch. 206, L. 1959; amd. Sec. 1, Ch. 217, L. 1963.

Amendments

The 1959 amendment added the proviso at the end of subd. (2).

The 1963 amendment reduced the number of retail liquor licenses authorized in places of over 1,000 population, as specified in the first sentence of paragraph (1) (a) (for previous text, see parent volume); inserted "(as to ownership only)" in the proviso to the fourth sentence in paragraph (1) (a); deleted the words "or for use at premises situated within any unincorporated town" which followed "cor-

porate limits thereof" in paragraph (1) (b); substituted "not more than one (1) license for each seven hundred fifty (750) population of the county, after excluding the population of incorporated cities and incorporated towns in such county" at the end of paragraph (1) (b) for "as determined by the board in its sound discretion"; and deleted from the end of paragraph (1) (b) a proviso reading, "provided that no retail liquor license shall be issued for any premises so situated unless the board shall find that the issuance of such license is required by public convenience and necessity."

Repealing Clause

Section 2 of Ch. 206, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 206, Laws 1959 provided the act should be in effect from

and after its passage and approval. Approved March 10, 1959.

4-409.1. Special permits to sell liquor—application and issuance—fee.

Any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, not otherwise licensed under this act, shall in the discretion of the board, without notice or hearing as provided in section 4-407.1, be entitled to a special permit to sell liquor at such post or lodge, to members and their guests only, to be consumed within the hall or building of such post or lodge.

The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization, shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a permit fee of ten dollars (\$10.00).

The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the board shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year. Such post or lodge must have either a retail license or special permit to sell beer before being entitled to a special permit to sell liquor.

History: En. Sec. 2, Ch. 235, L. 1963.

4-413. Persons to whom liquor may not be sold or given.**Jurisdiction of Prosecutions**

With respect to the prosecution of a licensee for the sale of liquor to an interdicted person, the provisions of this chapter control over the provisions of the

liquor control act (sections 4-201 to 4-241) and a justice court had jurisdiction over such a prosecution. State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P 2d 906.

4-414. Hours for sale of liquor. No liquor shall be sold, offered for sale or given away upon any premises licensed to sell liquor at retail during the following hours:

(a) Sunday, from two A. M. to one P. M.;

(b) On any other day between two A. M. and eight A. M.;

(c) On any day of a biennial general or primary election at which state and national officers are elected, during the hours when the polls are open, but not upon the day of any other election; provided, however, when any city, or incorporated or unincorporated town has any ordinance further restricting the hours of sale of liquor, such restricted hours shall be the hours during which sale of liquor at retail shall not be permitted within the jurisdiction of any such city or town.

History: En. Sec. 12, Ch. 84, L. 1937; amd. Sec. 2, Ch. 162, L. 1959.

Repealing Clause

Section 3 of Ch. 162, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 162, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 7, 1959.

Amendment

The 1959 amendment inserted the word "biennial"; inserted the phrase "at which state and national officers are elected" and substituted the phrase "but not upon the day of any other election; provided however" for the words "excepting bond elections."

4-417. Excise liquor tax—collection.

History: En. Sec. 15, Ch. 84, L. 1937; amd. Sec. 1, Ch. 41, L. 1939; amd. Sec. 1, Ch. 180, L. 1957. Approved at Referendum, Nov. 4, 1958.

Compiler's Note

This section was submitted to the qualified electors of the state of Montana and

approved by them on November 4, 1958, effective under Governor's proclamation of November 28, 1958 from and after the date of proclamation. The section as approved is set out in the parent volume.

4-420. Penalty for sale of alcoholic liquor without license.

Title Defect Cured

Since chapter 84 of the 1937 Session Laws was incorporated without reference to the original title in the Revised Codes of Montana 1947, as this section, and the Revised Codes of Montana 1947 were approved, legalized and adopted by the leg-

islature by the provisions of chapter 4 of the Laws of 1951 which now appear as section 12-330, any defect or omission in the title of the 1937 law was thereby cured. *State v. Garcia*, 132 M 600, 319 P 2d 962, 963.

4-425. Denial of application for license or renewal—suspension, etc.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see Table A, M. R. Civ. P. (sec. 93-2711-7).

License Issued under Mandate

Where, after stay of execution was denied, the liquor control board did not apply for supersedeas from the supreme

court but issued a license in compliance with a district court mandate, the question whether the mandate was proper did not present a justiciable controversy for the supreme court, even under section 93-8024. *Gill v. Rafn*, 133 M 505, 326 P 2d 974, distinguished in 136 M 453, 456, 348 P 2d 797, 799.

4-439. Penalty for violating act—revocation of license.

References

Cited in *State ex rel. Geschwender v. La Rowe*, 136 M 591, 341 P 2d 906.

TITLE 5—BANKS AND BANKING

Chapter 2. Organization and incorporation of banks, 5-206.

5. Miscellaneous regulatory provisions, 5-506.
8. Impairment of capital—insolvency, 5-803.
9. Examination and supervision—state examiner's fund, 5-904 to 5-910.
10. General powers and limitations of banks, 5-1001, 5-1028.
11. Closing and liquidation of banks, 5-1114, 5-1117.

CHAPTER 1—THE BANK ACT—DEFINITION OF TERMS

5-102. (6014.2) Institutions to which act is applicable.

Effect of Incorporation

A corporation which pursuant to sections 5-202 and 5-203 applied to the Montana superintendent of banks for an authorization under date of November 29, 1955, became a bank no later than April 30, 1956, the date on which the application was granted by the superintendent al-

though it did not commence a banking business until November 1, 1960. First Nat. Bank in Billings v. First Bank Stock Corp., 306 F 2d 937, 940.

References

First Nat. Bank in Billings v. First Bank Stock Corp., 197 F Supp 417, 423.

5-104. (6014.4) Commercial bank defined.

References

Cited in First Nat. Bank in Billings v. First Bank Stock Corp., 306 F 2d 937, 940.

CHAPTER 2—ORGANIZATION AND INCORPORATION OF BANKS

Section 5-206. Amount of capital.

5-202. Presentation of articles to superintendent of banks, etc.

Creation of Bank

When the superintendent of banks issued a certificate of authority for the establishment of a bank, the capital having been previously paid in, the organization became a state bank within the meaning of the Bank Holding Company Act of 1956 (U. S. C., tit. 12, secs. 1841 to 1848), even though it did not actually commence business until some time later. First Nat. Bank in Billings v. First Bank Stock Corp., 197 F Supp 417, 423.

Effect of Incorporation

A corporation which applied to the Montana superintendent of banks for an authorization under date of November 29, 1955, became a bank, as defined in section 5-102, no later than April 30, 1956, the date on which the application was granted by the superintendent although it did not commence a banking business until November 1, 1960. First Nat. Bank in Billings v. First Bank Stock Corp., 306 F 2d 937, 940.

5-203. Superintendent of banks to approve or refuse, etc.

Approval of Application

A corporation which applies to the Montana superintendent of banks for an authorization becomes a bank when the

application is granted by the superintendent. First Nat. Bank in Billings v. First Bank Stock Corp., 306 F 2d 937, 940.

5-206. (6014.12) Amount of capital. The amount of the common and preferred stock of a commercial bank shall not be less than twenty-five thousand dollars (\$25,000) and in addition thereto there shall be created a surplus of not less than ten per cent (10%) of the amount of the capital stock of said bank, which said surplus and capital stock shall be paid up

in cash and deposited with some bank or banks at the time the application is made to the superintendent of banks for the certificate of authorization hereinabove mentioned.

That a commercial bank having its place of business in a city or town of more than two thousand (2,000) and less than four thousand (4,000) inhabitants, as disclosed by the last authorized census, shall have a capital stock of not less than thirty thousand dollars (\$30,000), and a surplus of ten per cent (10%) of the capital stock as hereinbefore provided; that a commercial bank having its place of business in a city or town of more than four thousand (4,000) inhabitants, as disclosed by the last authorized census, shall have a capital stock of not less than fifty thousand dollars (\$50,000) and a surplus of ten per cent (10%) of the capital stock as hereinbefore provided.

The amount of the capital stock of a savings bank, trust company, or investment company shall be fixed and limited by the articles of agreement, and shall be not less than one hundred thousand dollars (\$100,000) nor more than ten million dollars (\$10,000,000), of which amount at least one hundred thousand dollars (\$100,000) must be subscribed and fully paid up in cash and on deposit with some bank or banks in this state when the application is made to the superintendent of banks for the certificate of authorization hereinabove mentioned. The remainder of the authorized capital stock may be subscribed and paid in at such times and under such regulations as the board of directors of such corporation may determine. The shares of the common capital stock of all banks shall have a par value of one hundred dollars (\$100) or such less amount as may be provided in the articles of incorporation; provided that this act shall not require any bank in existence and doing business to increase its capital stock.

History: En. Sec. 8, Ch. 89, L. 1927; amd. Sec. 1, Ch. 81, L. 1935; amd. Sec. 1, Ch. 45, L. 1963.

in the articles of incorporation" in the last sentence of the section.

Amendment

The 1963 amendment inserted the words "or such less amount as may be provided

References

Cited in *First Nat. Bank in Billings v. First Bank Stock Corp.*, 306 F 2d 937, 939.

5-207. (6014.13) Calling of first meeting.

Commencement of Business

A corporation did not cease to be a bank because it did not commence business within one year from the date of its incorporation as required by section 15-808 where the superintendent of banks did not cancel his certificate of authorization, as authorized by this section, but continued to recognize the corporation as a bank. *First Nat. Bank in Billings v. First Bank Stock Corp.*, 306 F 2d 937, 941.

Failure to Commence Business

The provisions of section 15-808 for automatic cessation of corporate powers if a corporation does not commence business within one year from the date of its incorporation are in direct conflict with this section, so do not apply to banks. *First Nat. Bank in Billings v. First Bank Stock Corp.*, 197 F Supp 417, 424.

CHAPTER 5—MISCELLANEOUS REGULATORY PROVISIONS

Section 5-506. Limitation on real estate loans.

5-506. (6014.31) Limitation on real estate loans. Any commercial bank organized under the laws of the state of Montana may make real

estate loans, secured by first liens upon improved real estate, including improved farm land and improved business and residential properties and may purchase any obligation so secured when the entire amount of such obligation is sold to the bank. Provided that, the amount of any such loan hereafter made shall not exceed fifty per centum (50%) of the appraised value of the real estate offered as security, and no such loan shall be made for a longer period than five (5) years, except that:

(1) Any such loan may be made in an amount not to exceed sixty per centum (60%) of the appraised value of the real estate offered as security and for a term not longer than twenty (20) years if such loan is secured by an amortized mortgage, deed of trust or other such instrument, under the terms of which the installment payments are sufficient to amortize forty per centum (40%) or more of the principal of the loan within a period of not more than twenty (20) years; and

(2) No such commercial bank shall make such loans in an aggregate sum in excess of the amount of its capital stock paid in and unimpaired plus the amount of its unimpaired surplus or in excess of sixty per centum (60%) of the amount of its time and saving deposits, whichever is the greater.

Loans made to finance the construction of residential or farm buildings and having maturities of not to exceed six (6) months, whether or not secured by a mortgage or a similar lien on real estate upon which the residential or farm building is being constructed, shall not be considered as loans secured by real estate within the meaning of this act, but shall be classed as ordinary commercial loans, provided that no commercial bank shall invest in or be liable on any such loans in an aggregate amount in excess of fifty per centum (50%) of its actually paid in and unimpaired capital.

Loans made to establish rural or commercial businesses which are in whole or in part discounted or loaned against as security by a federal reserve bank for any part of which a commitment shall have been made by a federal reserve bank or in which the Reconstruction Finance Corporation cooperated or purchases a participation in, shall not be subject to the restrictions or limitations of this act upon loans secured by real estate, provided any commercial bank in this state shall from time to time have the same authority to make loans upon real estate as may be given by acts of Congress of the United States or the federal reserve system to national banks or bank members of the federal reserve system.

(3) The foregoing limitations and restrictions shall not prevent the renewal or extension of loans heretofore made and shall not apply to real estate loans which are insured under the provisions of any act of the Congress of the United States; and said limitations and restrictions shall not apply to the making, extension or renewal of any loans which are made under subchapter II of the act of Congress, known as the servicemen's readjustment act of 1944, or any amendment thereof or supplement thereto, as to any part of such loans.

These provisions, however, shall not prevent any bank from taking another and immediately subsequent mortgage or deed of trust when it

already holds a first mortgage or deed of trust thereon on such real estate, nor from accepting a second lien on real estate to secure the repayment of a debt previously contracted in good faith; nor shall it prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith, when, in the judgment of the directors of such bank, such subsequent liens are necessary further to secure the payment of any debts and save such bank from loss; provided, the term "commercial bank" as used in this section, shall mean a bank organized to do the business specified in sections 5-104 to 5-108 of this code, only.

History: En. Sec. 27, Ch. 89, L. 1927; amd. Sec. 1, Ch. 23, L. 1941; amd. Sec. 1, Ch. 90, L. 1945; amd. Sec. 1, Ch. 25, L. 1959.

Amendment

The 1959 amendment in subd. (1) increased the term from "ten (10) years" to

"twenty (20) years" both times it appeared.

Repealing Clause

Section 2 of Ch. 25, Laws 1959 repealed all acts and parts of acts in conflict therewith.

CHAPTER 6—STATE BANKING DEPARTMENT—STATE EXAMINER EX-OFFICIO SUPERINTENDENT OF BANKS

5-605. (6014.63) Repealed.

Repeal

This section (Sec. 59, Ch. 89, L. 1927), relating to the salaries of the superintendent

of banks and of the clerks and bank examiners appointed by him, was repealed by Sec. 1, Ch. 129, Laws 1963.

CHAPTER 8—IMPAIRMENT OF CAPITAL—INSOLVENCY

Section 5-803. Deposits in insolvent bank.

5-803. (6014.74) Deposits in insolvent bank. Except as otherwise provided by the Uniform Commercial Code: Whenever any bank shall be insolvent in the manner described and set forth in this act, such bank shall not accept or receive on deposit any money, bank bills, or notes, United States treasury notes or currency, or other notes, bills or drafts circulating as money or currency, or transact any other business in connection with its operations, except as trustee for the depositors and parties transacting business with them, and it or they shall keep all such deposits of money, bills or notes, or United States treasury notes or currency, or other notes, bills, or drafts circulating as money or currency, separate and apart from the general assets of the bank, from and after the date of the accrual of such insolvency, and when such impairment or insolvency has been made good, such deposits received in trust may be transferred to the general assets of the bank on and by written consent of the superintendent of banks; provided, that in the event such insolvency be not made good then any and all such trust deposits shall be returned to the depositors making them; provided, further, that any officer, director, cashier, manager, member, partner or managing partner thereof, who shall knowingly accept or receive, be accessory to or permit or connive at the receiving or accepting of such trust deposits, except in the manner hereinbefore set forth in this section, shall be deemed guilty of a felony, and upon conviction

thereof, shall be punished by a fine not exceeding ten thousand dollars (\$10,000.00), or imprisonment in the state prison not exceeding five (5) years, or by both fine and imprisonment as aforesaid. [Effective January 1, 1965.]

History: En. Sec. 70, Ch. 89, L. 1927; amd. Sec. 11-102, Ch. 264, L. 1963.

Commercial Code" at the beginning of the section; and made a minor change in phraseology.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform

CHAPTER 9—EXAMINATION AND SUPERVISION—STATE EXAMINER'S FUND

- Section 5-904. Payments by counties.
 5-905. Payments by cities and towns.
 5-906. Payments by county free high schools.
 5-907. Payments by irrigation districts.
 5-908. Payments by banks, investment and trust companies.
 5-909. Payments by building and loan associations.
 5-910. Special examinations and fees.

5-904. (6014.78) Payments by counties. For the credit of the state general fund each county of the state, shall pay to the state treasurer on or before the first day of July of each year, according to its taxable valuation for the preceding year as follows:

Counties having a taxable valuation of five million dollars (\$5,000,000) or less, shall pay one hundred dollars (\$100.00) for each one million dollars (\$1,000,000) of taxable valuation, or fraction thereof;

Counties having a taxable valuation of more than five million dollars (\$5,000,000), but less than twenty million dollars (\$20,000,000), shall pay five hundred dollars (\$500.00), plus seventy-five dollars (\$75.00), for each one million dollars (\$1,000,000) of taxable valuation in excess of five million dollars (\$5,000,000) or fraction thereof;

Counties having a taxable valuation of more than twenty million dollars (\$20,000,000), but less than forty million dollars (\$40,000,000), shall pay sixteen hundred twenty-five dollars (\$1625.00) plus fifty dollars (\$50.00) for each one million dollars (\$1,000,000) of taxable valuation in excess of twenty million dollars (\$20,000,000) or fraction thereof;

Counties having a taxable valuation in excess of forty million dollars (\$40,000,000) shall pay twenty-six hundred twenty-five dollars (\$2625.00) plus twenty-five dollars (\$25.00) for each one million dollars (\$1,000,000) of taxable valuation in excess of forty million dollars (\$40,000,000) or fraction thereof;

The minimum payment hereunder for any one county shall be three hundred fifty dollars (\$350.00).

The fees as prescribed shall be paid to the state treasurer regardless of whether or not the state examiner has made an examination of a county within the calendar year in which the fee is payable.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 49, L. 1953; amd. Sec. 1, Ch. 186, L. 1959.

Amendment

The 1959 amendment generally revised this section changing the fees and deleted a provision providing for a maximum fee.

For section prior to amendment see parent volume.

Repealing Clause

Section 2 of Ch. 186, Laws 1959 repealed all acts and parts of acts in conflict therewith.

5-905. (6014.79) Payments by cities and towns. For the credit of such fund each city and town of the state shall pay to the state treasurer on or before the first day of July of each year, according to its taxable valuation for the preceding year, as follows:

Cities and towns having a taxable valuation of fifty thousand dollars (\$50,000) or less, fifty dollars (\$50);

Cities and towns having a taxable valuation of from fifty thousand dollars (\$50,000) to one hundred thousand dollars (\$100,000), sixty-five dollars (\$65);

Cities and towns having a taxable valuation of from one hundred thousand dollars (\$100,000) to two hundred thousand dollars (\$200,000), eighty dollars (\$80);

Cities and towns having a taxable valuation of from two hundred thousand dollars (\$200,000) to four hundred thousand dollars (\$400,000), one hundred five dollars (\$105);

Cities and towns having a taxable valuation of from four hundred thousand dollars (\$400,000) to six hundred thousand dollars (\$600,000), one hundred thirty dollars (\$130);

Cities and towns having a taxable valuation of from six hundred thousand dollars (\$600,000) to eight hundred thousand dollars (\$800,000), one hundred sixty dollars (\$160);

Cities and towns having a taxable valuation of from eight hundred thousand dollars (\$800,000) to one million dollars (\$1,000,000), two hundred dollars (\$200);

Cities and towns having a taxable valuation of from one million dollars (\$1,000,000) to one million two hundred fifty thousand dollars (\$1,250,000), two hundred forty dollars (\$240);

Cities and towns having a taxable valuation of from one million two hundred fifty thousand dollars (\$1,250,000) to one million five hundred thousand dollars (\$1,500,000), three hundred twenty dollars (\$320);

Cities and towns having a taxable valuation of from one million five hundred thousand dollars (\$1,500,000) to two million dollars (\$2,000,000), four hundred dollars (\$400);

Cities and towns having a taxable valuation of from two million dollars (\$2,000,000) to three million dollars (\$3,000,000), four hundred eighty dollars (\$480);

Cities and towns having a taxable valuation of from three million dollars (\$3,000,000) to four million dollars (\$4,000,000), five hundred sixty dollars (\$560);

Cities and towns having a taxable valuation of from four million dollars (\$4,000,000) to five million dollars (\$5,000,000), six hundred forty dollars (\$640);

Cities and towns having a taxable valuation of more than five million dollars (\$5,000,000), shall pay six hundred forty dollars (\$640) plus fifty

dollars (\$50) for each million dollars of taxable valuation or fraction thereof in excess of five million dollars (\$5,000,000);

The said fees as prescribed shall be paid to the state treasurer regardless of whether or not the state examiner has made an examination of a city or town within the calendar year in which the fee is payable.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 48, L. 1953; amd. Sec. 1, Ch. 138, L. 1959.

creased the fee in each classification for examination and deleted a sentence which set a maximum fee for any city at \$1,000.

Repealing Clause

Section 2 of Ch. 138, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment in the first sentence substituted the words "such fund" for the words "state general fund"; in-

5-906. (6014.80) Payments by county free high schools. For the credit of the state general fund, each county free high school shall pay to the state treasurer on or before the first day of July of each year a fee according to the following rates:

County free high schools having a maximum attendance record as shown in the records of the office of the state superintendent of public instruction, according to the following schedule:

All county free high schools having an attendance of two hundred (200) or less, sixty dollars (\$60);

All county free high schools having an attendance of in excess of two hundred (200) and not exceeding three hundred (300), seventy-five dollars (\$75);

All county free high schools having an attendance in excess of three hundred (300) and not exceeding four hundred (400), one hundred dollars (\$100);

All county free high schools having an attendance in excess of four hundred (400) and not exceeding six hundred (600), one hundred twenty-five dollars (\$125);

All county free high schools having an attendance in excess of six hundred (600) and not exceeding one thousand (1000), one hundred fifty dollars (\$150);

All county free high schools having an attendance in excess of one thousand (1000) and not exceeding fifteen hundred (1500), two hundred dollars (\$200);

All county free high schools having an attendance in excess of fifteen hundred (1500), three hundred dollars (\$300).

The fees as prescribed shall be paid to the state treasurer regardless of whether or not the state examiner has made an examination of a county free high school within the calendar year in which the fee is payable.

That the fees for examining auxiliary funds of a county free high school, when requested by the trustees of the said high school, or deemed necessary by the state examiner, shall be based on the fees as set forth in section 5-910.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 50, L. 1953; amd. Sec. 1, Ch. 139, L. 1959.

Repealing Clause

Section 2 of Ch. 139, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment raised the amount of the fee in each instance. For fees prior to amendment see parent volume.

5-907. (6014.81) Payments by irrigation districts. For the credit of said fund, each irrigation district under the supervision of the state examiner, shall pay to the state treasurer, within sixty (60) days from the date of examination, the following amounts as charges for such examinations, to be computed by the state examiner: For each day spent in the examination of books and records of any irrigation district by the state examiner or his representative, a charge of sixty dollars (\$60.00) shall be made; and, for any fraction of a day spent in the examination of any irrigation district's books and records, a charge of seven and one-half dollars (\$7.50) per hour shall be made. It shall be the duty of the state examiner, or his representative, to notify the secretaries of such districts of the time of presenting the books and records at the courthouse for examination.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 195, L. 1945; amd. Sec. 1, Ch. 159, L. 1959.

Repealing Clause

Section 2 of Ch. 159, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment completely revised this section. For section prior to amendment see parent volume.

5-908. (6014.82) Payments by banks, investment and trust companies. For the credit of said fund, each bank, trust company or investment company, under the supervision of the superintendent of banks, shall pay to the state treasurer, on or before the first day of July of each year, a fee, based upon its total assets as shown by the statement to the superintendent of banks on the last call report of the preceding year, according to the following rates:

The minimum fee for the examination of any bank, trust company or investment company shall be the sum of three hundred dollars (\$300);

For the first five million dollars (\$5,000,000) of assets, a charge of fifteen cents (15¢) for each one thousand dollars (\$1,000) of assets shall be made;

For the second five million dollars (\$5,000,000) of assets, a charge of ten cents (10¢) for each one thousand dollars (\$1,000) of assets shall be made;

For assets in excess of ten million dollars (\$10,000,000) but not exceeding twenty million dollars (\$20,000,000), a charge of five cents (5¢) for each one thousand dollars (\$1,000) of assets shall be made;

For assets in excess of twenty million dollars (\$20,000,000) but not exceeding thirty million dollars (\$30,000,000), a charge of three cents (3¢) for each one thousand dollars (\$1,000) of assets shall be made;

For all assets in excess of thirty million dollars (\$30,000,000), a charge of two cents (2¢) for each one thousand dollars (\$1,000) of assets shall be made.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 59, L. 1953; amd. Sec. 1, Ch. 141, L. 1959.

Repealing Clause

Section 2 of Ch. 141, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment completely revised this section. For section prior to amendment see parent volume.

5-909. (6014.83) Payments by building and loan associations. For the credit of said fund, each building and loan association under the supervision of the superintendent of banks, shall pay to the state treasurer, on or before the first day of July each year, a fee based upon the total assets of such association as shown by its last annual statement and upon the following rates:

The minimum fee to be paid by any building and loan association shall be the sum of one hundred dollars (\$100);

For the first five million dollars (\$5,000,000) of assets, a charge of fifteen cents (15¢) for each one thousand dollars (\$1,000) of assets shall be made;

For the second five million dollars (\$5,000,000) of assets, a charge of ten cents (10¢) for each one thousand dollars (\$1,000) of assets shall be made;

For assets in excess of ten million dollars (\$10,000,000) but not exceeding twenty million dollars (\$20,000,000), a charge of five cents (5¢) for each one thousand dollars (\$1,000) of assets shall be made;

For assets in excess of twenty million dollars (\$20,000,000) but not exceeding thirty million dollars (\$30,000,000), a charge of three cents (3¢) for each one thousand dollars (\$1,000) of assets shall be made;

For all assets in excess of thirty million dollars (\$30,000,000) a charge of two cents (2¢) for each one thousand dollars (\$1,000) of assets shall be made.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 114, L. 1959.

Repealing Clause

Section 2 of Ch. 114, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment completely revised the fees. For section prior to amendment see parent volume.

5-910. (6014.84) Special examinations and fees. Special examinations may be made of any county, city, town, school district, irrigation district, high school, bank, building and loan association, credit union or any other office, board or commission, whether temporary or permanent, however created, and for whatever purpose, having the control, management, collection or disbursement of any public money of any character or description, when in the judgment of the state examiner it shall be deemed necessary, and such special examinations shall be charged for at the rate of sixty dollars (\$60.00) a day for each person engaged in the examination. All special examination fees or charges so collected by the state examiner

and ex officio superintendent of banks and paid to the state treasurer, except those collected from state agencies, shall be placed in the earmarked revenue fund to be drawn upon by the state examiner and ex officio superintendent of banks to defray the actual costs and expenses of such special examinations, but all moneys remaining at the end of each current year shall be transferred by the state treasurer to the general fund.

The state examiner may also charge sixty dollars (\$60.00) a day for examining state agencies that spend moneys from funds other than the general fund, trust and legacy fund or agency fund. The charge shall be in proportion to the amount of such moneys spent to the total annual expenditures of the agency. All fees collected from state agencies shall be deposited in the revolving fund to the credit of the state examiner. All moneys remaining at the end of each current year shall be transferred to the general fund.

In any case where the current examination shall not have been made prior to the first day of July of any year, the above fees enumerated in sections 5-904, 5-905, 5-906, 5-907, 5-908 and 5-909 must be paid as herein specified, provided, however, that all examinations shall cover the entire period from the date of the last examination.

History: En. Sec. 2, Ch. 167, L. 1929; amd. Sec. 1, Ch. 58, L. 1953; amd. Sec. 1, Ch. 137, L. 1955; amd. Sec. 1, Ch. 180, L. 1959; amd. Sec. 222, Ch. 147, L. 1963.

Amendments

The 1959 amendment increased the fee per day from \$30 to \$60 and deleted a provision for expenses which read "plus the necessary transportation expenses and per diem at the rate currently in effect for all state and county employees."

The 1963 amendment, in the last sentence of the first paragraph, inserted "ex-

cept those collected from state agencies" and substituted "the earmarked revenue fund" for "a special fund to be known as the special examination fund," and deleted "in such special fund" after "moneys remaining"; inserted the second paragraph; and, in the last paragraph, inserted "enumerated in sections 5-904, 5-905, 5-906, 5-907, 5-908 and 5-909."

Repealing Clause

Section 2 of Ch. 180, Laws 1959 repealed all acts and parts of acts in conflict therewith.

CHAPTER 10—GENERAL POWERS AND LIMITATIONS OF BANKS

Section 5-1001. Acceptance and issuance of drafts and letters of credit.

5-1028. Branch bank prohibited—exceptions.

5-1001. Acceptance and issuance of drafts and letters of credit. Every bank organized and existing under the laws of Montana, shall have power and authority to accept for payment at a future date, drafts drawn upon it, by its customers, and to issue letters of credit, authorizing holders thereof to draw drafts upon it, or its correspondents at sight or on time, provided that the total amount of drafts so accepted or letters of credit so issued for any one person, firm or corporation, shall not at any one time exceed twenty per cent (20%) of the capital and surplus of the accepting or issuing bank. [Effective January 1, 1965.]

History: En. Sec. 74, Ch. 89, L. 1927; amd. Sec. 11-103, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "not exceeding one (1) year" after "at sight or on time."

5-1007, 5-1008. (6014.91, 6014.92) Repealed.**Repeal**

These sections (Secs. 80, 81, Ch. 89, L. 1927), relating to the liability of banks paying forged checks, and to checks de-

layed in presentment, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

5-1016, 5-1017. (6014.100, 6014.101) Repealed.**Repeal**

These sections (Secs. 89, 90, Ch. 89, L. 1927), relating to bank liability on items forwarded, and to due diligence in for-

warding of items for collection, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

5-1028. (6014.112) Branch bank prohibited — exceptions. No bank shall maintain any branch bank, receive deposits or pay checks, except over the counter of and in its own banking house. Provided, that nothing in this section shall prohibit ordinary clearing house transactions between banks.

With the prior approval of the superintendent of banks, any bank doing business in this state may establish and maintain not more than one (1) detached drive-in and walk-up facility consisting of one (1) or more teller's windows. The distance of the facility from the main banking house shall not exceed one thousand (1,000) feet measured in a straight line from the closest point of the main banking house to the farthest point of the detached facility. The facility shall not be closer than two hundred (200) feet to a facility operated by any other bank nor closer than three hundred (300) feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The service of the facility shall be limited to receiving deposits of every kind, cashing checks or orders to pay, receiving payments payable at the bank and such other transactions as are normally and usually conducted or handled at tellers' windows in the main banking house.

History: En. Sec. 101, Ch. 89, L. 1927; amd. Sec. 1, Ch. 39, L. 1963.

Amendment

The 1963 amendment made a minor grammatical change in the first sentence and added the second paragraph.

Holding Company Banking

This section does not prohibit holding company banking. First Nat. Bank in Billings v. First Bank Stock Corp., 197 F Supp 417, 427.

Intention to Operate as Branch

A state bank whose stock was substantially all owned by a national bank

did not violate this section, although the interlocking directorates of the national bank and the state bank at one time intended that the state bank should operate as a branch of the national bank, where steps were taken to eliminate any such intention. First Nat. Bank in Billings v. First Bank Stock Corp., 197 F Supp 417, 427.

Unitary Type of Operation

A bank did not violate this section where the unitary type of operation characteristic of branch banking was not present. First Nat. Bank in Billings v. First Bank Stock Corp., 306 F 2d 937, 943.

5-1043. (6014.127) Repealed.**Repeal**

This section (Sec. 116, Ch. 89, L. 1927), relating to the time limit on stop payment

orders, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

5-1047 to 5-1049. Repealed.**Repeal**

These sections (Secs. 1 to 3, Ch. 19, L. 1951), relating to the time allowed banks for the refusal of demand items presented

for credit, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

5-1051. Photographic or micro-film reproduction of bank records, etc.**Checking Account Records**

In action by administratrix to recover amount of automobile purchase loan made by decedent to defendant, bank records of

decedent's checking account were properly admitted as evidence. *Olson v. McLean*, 132 M 111, 313 P 2d 1039, 1042, 1044.

CHAPTER 11—CLOSING AND LIQUIDATION OF BANKS

Section 5-1114. Claims—order of payment—priorities.

5-1117. Disposition of unclaimed funds.

5-1107. (6014.137) Powers of superintendent on closing bank, etc.**Cross-Reference**

Application of Montana Rules of Civil Procedure to this section, see Table A, M. R. Civ. P. (sec. 93-2711-7).

5-1108. (6014.138) Recourse of aggrieved bank, etc.**Cross-Reference**

Application of Montana Rules of Civil Procedure to this section, see Table A, M. R. Civ. P. (sec. 93-2711-7).

5-1112. (6014.142) Claims—allowance and rejection.**Cross-Reference**

Application of Montana Rules of Civil Procedure to this section, see Table A, M. R. Civ. P. (sec. 93-2711-7).

5-1114. (6014.144) Claims—order of payment—priorities. Except as otherwise provided by the Uniform Commercial Code, the order of payment of the debts of a bank liquidated by the superintendent of banks shall be as follows:

(1) to (8). * * * [Same as parent volume.]

[Effective January 1, 1965.]

History: En. Sec. 134, Ch. 89, L. 1927; amd. Sec. 4, Ch. 145, L. 1931; amd. Sec. 11-104, Ch. 264, L. 1963.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

5-1117. (6014.147) Disposition of unclaimed funds. The superintendent shall certify to the treasurer of the state a complete list of funds remaining in his hands uncalled for, which have been left in his hands in his official capacity, in trust for depositors in and creditors of any liquidated bank after they have been held by him for six months from the date of the final liquidation of the institution. Along with this certificate, he shall transmit to the treasurer of the state the funds with accumulated interest thereon, which he has so held in trust for six months. A copy of such certificate shall also be filed with the state auditor, who shall make a record thereof.

The state treasurer shall deposit such funds and interest in the general fund of the state of Montana.

Any depositor or creditor of a liquidated bank who has not been paid the amount standing to his credit as thus certified to the state treasurer, may apply to the state board of examiners for the amount due him. The depositor or creditor shall make an affidavit and offer proof of his identity and of the amount due him by the liquidated bank. When satisfied as to the correctness of the claim and of the identity of the person, the state board of examiners shall forward it to the auditor, who shall audit the same and if found correct so certify to the state board of examiners, who, if they approve it, shall transmit it to the legislative assembly with a statement of their approval.

History: En. Sec. 137, Ch. 89, L. 1927; amd. Sec. 1, Ch. 143, L. 1961.

to be due such depositor or creditor which shall be paid by the treasurer."

Amendment

The 1961 amendment inserted the second paragraph; substituted "state board of examiners" for "superintendent" in the first sentence of the last paragraph; and substituted the third sentence of the last paragraph for a sentence reading, "When satisfied as to the correctness of the claim and of the identity of the person, the superintendent shall approve the claim and forward it to the auditor, who shall audit the same and if found correct issue his warrant payable to the depositor or creditor for the amount shown by the records

Funds Previously Transmitted

Section 2 of Ch. 143, Laws of 1961, provided for disposition of previously transmitted funds as follows: "Section 2. Disposition of unclaimed funds previously transmitted to the state treasurer. All funds and accumulated interest thereon heretofore transmitted to the state treasurer under the provisions of section 5-1117 of Replacement Volume 1, Part 2, of the Revised Codes of Montana, 1947, shall be deposited by the state treasurer in the general fund of the state of Montana."

5-1118. (6014.148) Disposition of assets remaining after payment, etc.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see Table A, M. R. Civ. P. (sec. 93-2711-7).

CHAPTER 14—UNIFORM COMMON TRUST ACT

5-1401. Common trust fund authorized.

NOTE.—Uniform State Law. In addition to the states listed in the compiler's note in the parent volume the following

also have adopted the Uniform Common Trust Fund Act: District of Columbia, Iowa, and Oklahoma.

TITLE 6—BONDS AND UNDERTAKINGS

CHAPTER 4—PUBLIC WORKS CONTRACTOR'S BOND

6-401. (5668.41) Contractors performing public work to furnish bond, etc.

Estoppel of Surety

This section did not prevent a surety on a bond given hereunder from becoming liable by estoppel to a third party who, in reliance on the surety's representations that he would be protected by the bond, paid off unpaid checks of the contractor and advanced money to the contractor for future payments, all in the nature of

claims covered by the bond, *Bower v. Tebbs*, 132 M 146, 314 P 2d 731.

Provender, Materials or Supplies

Equipment rental comes within the phrase "provender, materials or supplies" as used in a bond given under this section. *Bower v. Tebbs*, 132 M 146, 314 P 2d 731.

TITLE 7—BUILDING AND LOAN ASSOCIATIONS

Chapter 1. Laws regulating the operation of building and loan associations, 7-113.1.

CHAPTER 1—LAWS REGULATING THE OPERATION OF BUILDING AND LOAN ASSOCIATIONS

Section 7-113.1. Loans and investments.

7-113.1. Loans and investments. Building and loan associations and savings and loan associations organized, and operating under the laws of the state of Montana, and insured by the federal savings and loan insurance corporation, may, in addition to any loan or investment now permitted, make any real estate loan upon terms and conditions set by the state superintendent of banks but not to exceed the authority to make real estate loans granted to savings and loan associations chartered by the United States, and domiciled in Montana, the provisions of any laws of this state to the contrary notwithstanding. The additional real estate loans hereby authorized may be made on the same terms and conditions and subject to the same limitations as shall from time to time be permitted by acts of Congress of the United States or of the federal home loan bank board to federally chartered savings and loan associations domiciled in this state.

History: En. Sec. 1, Ch. 263, L. 1963.

Title of Act

An act providing for the making of loans and investments by building and loan associations and savings and loan as-

sociations organized and operating under the laws of the state of Montana, and providing that such associations may make all real estate loans which may be made by federal savings and loan associations having domicile in the state of Montana.

7-122. (6355.21) Taxation of associations.

Application

This section is a statute for classification of property of building and loan associations for property tax purposes and has nothing to do with corporate license taxation. Home Bldg. & Loan Assn. of Helena v. Fulton, — M —, 375 P 2d 312, 313.

Construction

There is no conflict between this section and sections 7-159 and 84-1501, since they deal with separate and distinct taxes. Home Bldg. & Loan Assn. of Helena v. Fulton, — M —, 375 P 2d 312, 313.

7-159. Act controlling.

Construction

There is no conflict between this section and sections 7-122 and 84-1501, since they

deal with separate and distinct taxes. Home Bldg. & Loan Assn. of Helena v. Fulton, — M —, 375 P 2d 312, 313.

TITLE 8—CARRIERS AND CARRIAGE

- Chapter 1. Motor carriers—license and regulation, 8-101, 8-103, 8-104.1 to 8-104.6, 8-119, 8-121.
2. Pipe line carriers of oil and coal—regulation, 8-201, 8-202, 8-204 to 8-207, 8-210.
5. Bills of lading, Repealed—Section 10-102, Chapter 264, Laws of 1963.
7. Common carriers in general, 8-709.

CHAPTER 1—MOTOR CARRIERS—LICENSE AND REGULATION

- Section 8-101. Definition of terms.
8-103. Board of railroad commissioners to supervise and regulate motor carriers—appointment and duties of supervisor.
8-104.1. Board's duty to fix rates.
8-104.2. Rate schedules, filing with board.
8-104.3. Deviation from rate schedules unlawful.
8-104.4. Rate preference, discrimination forbidden.
8-104.5. Changes, revisions of rate schedules, how made.
8-104.6. Recovery of excess charges.
8-119. Penalties for violations.
8-121. Acts which prima facie deem person to be motor carrier.

8-101. (3847.1) **Definition of terms.** Unless the language or context clearly indicates that different meanings are intended, the following words, terms and phrases shall, for the purposes of this act, be given the meanings hereinafter subjoined to them.

(a) to (g). * * * [Same as parent volume.]

(h) The term "motor carrier," when used in this act, means every person or corporation, their lessees, trustees, or receivers appointed by any court whatsoever, operating motor vehicles upon any public highway in the state of Montana for the transportation of persons and/or property for hire, on a commercial basis either as a common carrier or under private contract, agreement, charter, or undertaking; provided that nothing in this act shall be construed as affecting motor vehicles used in carrying property consisting of ordinary livestock or agricultural commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation, or, the operation of school busses which are used in conveying school children to and from district or other schools, or the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by any person, firm or corporation engaged exclusively in the construction or maintenance of highways, or engaged exclusively in logging or mining operations, insofar as the use of employees, supplies and materials in construction and production is concerned, or the transportation of property by motor vehicle within any city, town, or village with a population, according to the latest United States census, of less than five hundred persons, or within the commercial areas thereof as determined by the board.

(i) The words "for hire" mean for remuneration of any kind, paid or promised, either directly or indirectly, or received or obtained through leasing, brokering or buy-and-sell arrangements whereby a remuneration is obtained or derived for transportation service. An accommodative transportation movement by a person not in the transportation business shall not be construed as a service for hire, even though the persons owning the property transported or persons transported share in the cost or pay for the movement. Nothing in this act shall be construed so as to prevent bona fide leases, brokerage agreements or buy-and-sell agreements.

(j), (k). * * * [Same as parent volume.] ✓

History: En. Sec. 1, Ch. 184, L. 1931; amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, L. 1963.

Amendment

The 1963 amendment deleted the words "or the transportation of freight or passengers by motor vehicles when done occasionally and not as a regular business" from the proviso to paragraph (h); added the words "or received or obtained through leasing, brokering or buy-and-sell

arrangements whereby a remuneration is obtained or derived for transportation service" to the first sentence of paragraph (i); substituted "An accommodative transportation movement" for "An occasional accommodative transportation service" at the beginning of the second sentence of paragraph (i); inserted "persons owning the property transported or" in the second sentence of paragraph (i); substituted "movement" for "service" at the end of the second sentence of paragraph (i); and added the third sentence of paragraph (i).

8-103. (3847.3) Board of railroad commissioners to supervise and regulate motor carriers—appointment and duties of supervisor. (a) The board of railroad commissioners is hereby vested with power and authority, and it is hereby made its duty to supervise and regulate every motor carrier in this state; to fix specific, just, reasonable, equal and non-discriminatory rates, fares, charges and classifications for class A and class B motor carriers; to regulate the properties, facilities, operations, accounts, service, practices, affairs and safety of operations of all motor carriers; to require the filing of annual and other reports, tariffs, schedules, or other data by such motor carriers and to supervise and regulate motor carriers in all matters affecting the relationship between such motor carriers and the traveling and shipping public. The board shall have power and authority by general order or otherwise to prescribe rules and regulations in conformity with this act applicable to any and all motor carriers.

(b) The board shall appoint a supervisor of motor carriers who shall have general responsibility to it for enforcement of the provisions of this act. The supervisor shall direct all enforcement activities in behalf of the board, including the investigation and prosecution of violations of this act or the rules, regulations or orders prescribed thereunder by the board. The supervisor shall be either an attorney admitted to practice law in the state of Montana, or a person qualified by at least five (5) years of suitable experience and training in appropriate phases of the motor carrier industry; he shall serve at the pleasure of the board and at an annual salary to be set by the board. The supervisor, and whatever field inspectors may be employed by the board to assist him, shall be deemed peace officers for the purpose of making arrests in connection

with violations of this act, and issuing summonses, accepting bail and serving warrants of arrest. The supervisor and field inspectors are empowered to make reasonable inspections of cargoes carried by commercial motor vehicles and require production of manifests, bills of lading, leases and other documents relating to the cargo, routing or ownership of such vehicles.

(c) All rules and regulations in relation to schedules, service, tariffs, rates, facilities, accounts and reports shall have due regard for the differences existing between class A, class B, and class C motor carriers as herein defined, and shall be just, fair and reasonable to the said classes of motor carriers in their relations to each other and to the public. In fixing the tariff or rates to be charged by class A and class B motor carriers for the carrying of persons and/or property, the board shall take into consideration the kind and character of service to be performed, the public necessity therefor, and the effect of such tariff and rates upon other transportation agencies, if any, and as far as possible avoid detrimental or unreasonable competition with existing railroad service or service furnished by a motor carrier.

History: En. Sec. 3, Ch. 184, L. 1931;
amd. Sec. 1, Ch. 205, L. 1963.

Amendment

The 1963 amendment divided the former text into subsections (a) and (c) and inserted subsection (b).

8-104. (3847.4) Repealed.

Repeal

This section (Sec. 4, Ch. 184, L. 1931;
Sec. 1, Ch. 262, L. 1955), relating to rates

and schedules, was repealed by Sec. 7,
Ch. 201, L. 1961.

8-104.1. Board's duty to fix rates. It shall be the duty of the board to fix, alter, regulate and determine just, fair, reasonable, non-discriminatory, and sufficient rates, fares, charges, classifications, and rules of service for the operation of class A and B motor carriers within this state. The board also may fix and determine reasonable maximum or minimum rates for the operations of any class C motor carrier when the same are required for the best interests of public transportation.

History: En. Sec. 1, Ch. 201, L. 1961.

Title of Act

An act to revise the requirements, procedures and methods of filing and adopting rates, charges, fares, classifications, and rules of service for motor carriers; repealing section 8-104, Revised Codes of

Montana, 1947, as amended by chapter 262, laws of Montana, 1955; repealing section 8-106, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith; providing for an effective date.

8-104.2. Rate schedules, filing with board. Every class A or B motor carrier holding a certificate must maintain on file with the board a full and complete schedule of its rates, fares, charges, classifications, rules of service, and any and all tariff provisions relating to such rates, fares, charges, classifications, or rules. Every schedule on file with and approved by the board on the effective date of this act shall remain in full force and effect until changed or modified by the board or by the carrier with the approval of the board.

No change, modification, alteration, increase, or decrease in any rate, fare, charge, classification, or rule of service shall be made by any motor carrier without first obtaining the approval of the board. The board shall prescribe rules and/or regulations providing for the form and style of all schedules and tariffs and for the procedures to be followed in filing or publishing any changes or modifications of the same.

History: En. Sec. 2, Ch. 201, L. 1961.

8-104.3. Deviation from rate schedules unlawful. It shall be unlawful for any class A or B motor carrier to charge, demand, receive, or collect any greater or less rate, charge or fare than that fixed by the board for the transportation service provided. When maximum or minimum rates have been established for any service provided by any class C motor carrier, it shall likewise be unlawful for such carrier to charge, demand, receive, or collect any greater compensation or rate than that established for the service by any applicable maximum rate, or any less compensation or rate than that established by any applicable minimum rate. It also shall be unlawful for any class A or B motor carrier, or any class C motor carrier subject to maximum or minimum rates, to refund or remit in any manner or by any device any portion of the rates, fares, and charges required to be collected under the schedule of the class A or B carrier on file with the board or under the maximum or minimum rates established by the board for the class C carrier.

History: En. Sec. 3, Ch. 201, L. 1961.

8-104.4. Rate preference, discrimination forbidden. All rates, fares, charges, classifications, or rules of service for the transportation of property and/or persons upon the public highways of this state must be fair, just, reasonable, and non-discriminatory, and no motor carrier operating under established rates shall make, give, or permit any undue preference or advantage to any particular person, company, partnership, corporation or locality, or any particular description of traffic, nor shall such motor carrier subject any particular person, company, partnership, corporation, or locality, or any particular description of traffic, to any prejudice or disadvantage in any respect.

The board may, upon its own initiative or upon the complaint of any interested party, investigate any rate, fare, charge, classification, or rule of service contained in the schedule of any motor carrier; if the board shall find, after such investigation, that any such rate, fare, charge, classification, or rule of service is unfair, unjust, unreasonable, or discriminatory, it shall disallow the same and fix a rate, fare, charge, classification, or rule of service which shall be fair, just, reasonable, and non-discriminatory, and it shall order the affected motor carrier or carriers to conform to such modified schedule; provided however, that each motor carrier affected by any complaint or investigation shall first be given notice of the same and an opportunity to be heard before the board.

History: En. Sec. 4, Ch. 201, L. 1961.

8-104.5. Changes, revisions of rate schedules, how made. No motor carrier shall change or revise any rate, fare, charge, classification, or rule

of service contained in its schedule without first obtaining approval therefor from the board. Such changes or revisions shall be made by filing with the board the tariff sheet or sheets containing such changes or revisions, plainly stating the change or changes, or revision or revisions, to be made; provided further, that the public shall be provided with such notice of the proposed changes or revisions as the board shall, by rule, require. The tariff sheet or sheets containing such changes or revisions shall be deemed approved and effective thirty (30) days after the same are filed unless the proposed revisions or changes are suspended or disallowed by the board prior to the expiration of the thirty (30) day period; provided however, that the board may, for good cause, allow any change or revision to become effective on less than thirty (30) days after the filing thereof.

Upon its own initiative, or upon the complaint of any interested party filed with the board within fifteen (15) days after the date upon which a change or revision of any rate, fare, charge or classification is filed with the board, the board may suspend the operation of such rate, fare, charge, or classification for a period not to exceed one hundred and twenty (120) days, provided however that the order directing such suspension must be issued by the board not less than two (2) business days prior to the proposed effective date; and provided further, that the motor carrier or carriers filing such rate, fare, charge, or classification shall be given prompt notice by the board of any complaint filed by any interested party to any proposed tariff change or revision and such carrier or carriers also shall be given an opportunity to reply to any such complaint. If the proposed change or revision is in a tariff issued by a tariff publishing bureau for a motor carrier or carriers, notice to such bureau of any complaint will constitute notice to the participating carriers in such tariff. When the suspension of any proposed change or revision in a tariff is ordered by the board, it shall also order a public hearing to consider the reasonableness of the proposed change or revision; due notice shall be given for such hearing to all known interested or affected persons and the same shall be allowed to appear and present evidence. After considering the evidence presented at such hearing, the board shall issue an order approving, denying, or modifying the proposed change or revision; provided however, that unless such hearing is held and such order is issued within one hundred and twenty (120) days from the date upon which the suspension was ordered, the proposed change or revision shall be deemed approved and effective as filed.

History: En. Sec. 5, Ch. 201, L. 1961.

8-104.6. Recovery of excess charges. Any sum or amount of money paid to any motor carrier in excess of the rates, fares, or charges established for such service by the board may be recovered from such carrier by the person or shipper who paid the same in any action brought in the district court of the county in which such payment was made, provided that any such action must be brought within two (2) years from the date of such payment. No contract or agreement, written or otherwise, between such person or shipper and any motor carrier, shall be admissible in evi-

dence for the purpose of showing a waiver of the right given by this section. If upon the trial of such action, it shall satisfactorily appear to the court or jury that such overcharge was wilfully made, the person or shipper bringing the said action shall be awarded damages in treble the amount of such excess or overcharge, together with the costs and expenses of such action, including a reasonable attorney's fee, to be taxed and collected as other costs in the action.

History: En. Sec. 6, Ch. 201, L. 1961.

Repealing Clause

Section 7 of Ch. 201, Laws 1961 read "That section 8-104, Revised Codes of Montana, 1947, as amended by chapter 262 of the laws of Montana, 1955, and section 8-106, Revised Codes of Montana, 1947, and all other acts or parts of acts in con-

flict herewith be and the same hereby are repealed."

Effective Date

Section 8 of Ch. 201, Laws 1961, provided this act should be in effect from and after its passage and approval. Approved March 7, 1961.

8-106. (3847.6) Repealed.

Repeal

This section (Sec. 6, Ch. 184, L. 1931), relating to discrimination in rates, was repealed by Sec. 7, Ch. 201, L. 1961.

8-119. (3847.19) Penalties for violations. Any motor carrier, subject to the provisions of this act, or, whenever any such motor carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or persons acting for or employed by such corporation, who violates or fails to comply with or who procures, aids, or abets in the violation of any provision of this act, or who fails to obey, observe, or comply with any lawful order, decision, rule or regulation, direction, demand, or requirement of the board, or any part of provisions thereof, shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00), or by imprisonment in the county jail for a period of not more than thirty (30) days, or by both such fine and imprisonment.

History: En. Sec. 19, Ch. 184, L. 1931; amd. Sec. 2, Ch. 204, L. 1963.

Amendment

The 1963 amendment increased the minimum fine from \$5 to \$25 and the maximum fine from \$100 to \$500.

8-121. (3847.21) Acts which prima facie deem person to be motor carrier. Any person, firm or corporation maintaining a public motor vehicle stand, or by sign, symbol, or device or vehicle or clothing, or by advertisement holds forth transportation for compensation, or solicits the transportation of persons or property for compensation among the public, or solicits for trips for compensation, or provides transportation service to the public under the guise of leasing or buy-and-sell arrangements, shall be deemed, prima facie, a "motor carrier" subject to this act, and the burden of proof shall be on such person, firm or corporation to disprove such status.

History: En. Sec. 21, Ch. 184, L. 1931; amd. Sec. 3, Ch. 204, L. 1963.

Amendment

The 1963 amendment deleted the words "at trains, hotels or other places" which

followed the words "among the public"; and inserted the words "or provides transportation service to the public under the guise of leasing or buy-and-sell arrangements."

Separability Clause

Section 4 of Ch. 204, Laws 1963 read "It is the intent of the legislative assembly

that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 2—PIPE LINE CARRIERS OF OIL AND COAL—REGULATION

Section 8-201. Common carriers defined.

8-202. Pipe lines public utilities—jurisdiction.

8-204. Establishment of rates—hearing—complaints.

8-205. Railroad commissioners may require connections—facilities—rules.

8-206. Tariffs and reports—board's authority to hear complaints—witnesses—enforcement of orders by board.

8-207. Discrimination prohibited—establishment of rates.

8-210. Duty to transport without discrimination.

8-201. (3848) Common carriers defined. Every person, firm, corporation, limited partnership, joint-stock association or association of any kind whatever:

(a) Owning, operating, or managing any pipe line or any part of any pipe line within the state of Montana, for the transportation of crude petroleum, coal, or the products thereof to or for the public for hire, or engaged in the business of transporting crude petroleum, coal, or the products thereof by pipe lines; or

(b) Owning, operating, or managing any pipe line or any part of any pipe line for the transportation of crude petroleum, coal, or the products thereof, to or for the public for hire, and which said pipe line is constructed or maintained upon, along, over, or under any public road or highway; or

(c) Owning, operating, or managing any pipe line or any part of any pipe line or pipe lines for transportation to or for the public for hire, of crude petroleum, coal, or the products thereof, and which said pipe line or pipe lines is or may be constructed, operated, or maintained across, upon, along, over, or under the right of way of any railroad, corporation, or other common carrier required by law to transport crude petroleum, coal, or the products thereof as a common carrier; or

(d) Owning, operating, or managing, or participating in ownership, operation, or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipe line or pipe lines, or any part of any pipe line, for the transportation from any oil field, coal mine or field, or place of production within the state of Montana to any distributing, refining, or marketing center or reshipping point thereof, within this state, of crude petroleum, coal, or the products thereof, bought of others; or

(e) Made a common carrier by or under the terms of contract with or in pursuance of the law of the United States, is hereby declared to be a common carrier and subject to the provisions hereof, but the provisions of this act shall not apply to those pipe lines which are limited in their use to the wells, stations, plants and refineries of the owner and which

are not a part of the pipe line transportation system of any common carrier as herein defined; nor shall such provisions apply to any property of such a common carrier which is not a part of or necessarily incident to its pipe line transportation system.

History: En. Sec. 1, Ch. 8, Ex. L. 1921; re-en. Sec. 3848, R. C. M. 1921; amd. Sec. 1, Ch. 190, L. 1955; amd. Sec. 1, Ch. 170, L. 1963.

Amendment

The 1963 amendment inserted "coal" after "crude petroleum" twice in subd. (a), once in subd. (b), twice in subd. (c), and once in subd. (d); and inserted "coal mine or field" after "oil field" in subd. (d).

8-202. (3849) Pipe lines public utilities—jurisdiction. It is declared that the operation of these pipe lines, to which this act applies, for the transportation of crude petroleum, coal, or the products thereof, in connection with the purchase or purchase and sale of such crude petroleum, coal, or the products thereof, is a business in mode of the conduct of which the public is interested, and as such is subject to regulation by law; and accordingly it is provided that from and after the expiration of thirty (30) days from the time this law takes effect the business of purchasing, or of purchasing and selling crude petroleum, coal, or the products thereof, using in connection with such business a pipe line of the class subject to this act to transport the crude petroleum, coal, or the products thereof so bought or sold shall not be conducted, unless such pipe line so used in connection with such business be a common carrier within the purview of this law and subject to the jurisdiction herein conferred upon the board of railroad commissioners of Montana. It shall be the duty of the attorney general to enforce this provision by injunction or other adequate remedy.

History: En. Sec. 2, Ch. 8, Ex. L. 1921; re-en. Sec. 3849, R. C. M. 1921; amd. Sec. 2, Ch. 190, L. 1955; amd. Sec. 2, Ch. 170, L. 1963.

Amendment

The 1963 amendment inserted "coal" after "crude petroleum" in four places.

8-204. (3851) Establishment of rates — hearing — complaints. The board of railroad commissioners of Montana shall have the power to establish and enforce rates of charges and regulations for gathering, transporting, loading, and delivering crude petroleum, coal, or the products thereof by such common carrier in this state, and for the use of storage facilities necessarily incident to such transportation and to prescribe and enforce rules and regulations for the government and control of such common carriers in respect to their pipe lines and receiving, transferring and loading facilities, and it shall be its duty to exercise such power upon petition by any person showing a substantial interest in the subject. No order establishing or prescribing rates, rules, and regulations shall be made except after hearing and at least ten (10) days' and not more than thirty (30) days' notice to the person, firm, corporation, partnership, joint-stock association, or association owning or controlling and operating the pipe line or pipe lines affected. In the event any rate shall be filed by any pipe line and complaint against same or petition to reduce same shall be filed by any shipper, and such complaint be sustained, in whole or in part, all shippers who shall have paid the rates so filed by the pipe line shall have the right to reparation or reimbursement of all excess in trans-

portation charges so paid over and above the proper rates^{as} as finally determined on all shipments made after the date of the filing of such complaint.

History: En. Sec. 4, Ch. 8, Ex. L. 1921; **Amendment**

re-en. Sec. 3851, R. C. M. 1921; amd. Sec. 3, Ch. 190, L. 1955; amd. Sec. 3, Ch. 170, L. 1963.

The 1963 amendment inserted "coal" after "crude petroleum" in the first sentence.

8-205. (3852) Railroad commissioners may require connections—facilities—rules. Every common carrier as above defined shall exchange crude petroleum tonnage, coal tonnage, or petroleum or coal products tonnage with each like common carrier, and the board of railroad commissioners of Montana shall have the power to require such connections and facilities for the interchange of such tonnage to be made at every locality reached by both pipe lines whenever a necessity therefor exists and subject to such rates and regulations as may be made by the board of railroad commissioners of Montana; and any such common carrier under like rules and regulations shall be required to install and maintain facilities for the receipt and delivery of crude petroleum, coal, or the products thereof of patrons at all points on such pipe line. No carrier shall be required to receive or transport any crude petroleum, coal, or the products thereof except such as may be marketable under rules and regulations to be prescribed by the board of railroad commissioners of Montana which they are hereby empowered and required to prescribe. The board of railroad commissioners of Montana is also empowered and required to make rules for the ascertainment of the amount of water and other foreign matter in crude oil, coal, or the products thereof tendered for transportation, and for deduction therefor and for the amount of deduction to be made for temperature, leakage and evaporation. It is provided, however, that the recital herein of particular powers on the part of said board of railroad commissioners of Montana shall not be construed to limit the general powers conferred by this act. Until set aside or vacated by some decree or order of a court of competent jurisdiction, all orders of the board of railroad commissioners of Montana as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity.

History: En. Sec. 5, Ch. 8, Ex. L. 1921; re-en. Sec. 3852, R. C. M. 1921; amd. Sec. 4, Ch. 190, L. 1955; amd. Sec. 4, Ch. 170, L. 1963.

roleum or coal products tonnage" near the beginning of the section for "crude petroleum tonnage or petroleum products tonnage"; and inserted "coal" after "crude petroleum" or "crude oil" in three places.

Amendment

The 1963 amendment substituted "crude petroleum tonnage, coal tonnage, or pe-

8-206. (3853) Tariffs and reports—board's authority to hear complaints—witnesses—enforcement of orders by board. Such common carriers of crude petroleum, coal, or the products thereof shall make and publish their tariffs under such rules and regulations as may be prescribed by said board of railroad commissioners of Montana, the board of railroad commissioners of Montana shall require them to make reports and may investigate their books and records kept in connection with such business. The board of railroad commissioners of Montana shall require

of such common carrier pipe lines monthly reports, duly verified under oath, of the total quantities of crude petroleum, coal, or the products thereof owned by such pipe lines and of that held by them in storage for others, as also of their unfilled storage capacity, provided no publicity shall be given by the board of railroad commissioners of Montana to the reports as to stock of crude petroleum, coal, or the products thereof on hand of any particular pipe line; but the board of railroad commissioners of Montana in its discretion may make public the aggregate amounts held by all the pipe lines making such reports, and of their aggregate storage capacity. The board of railroad commissioners of Montana shall have the power and authority to hear and determine complaints, to require attendance of witnesses, and to institute suits and sue out such writs and process as may be necessary for the enforcement of its orders.

History: En. Sec. 6, Ch. 8, Ex. L. 1921;
re-en. Sec. 3853, R. C. M. 1921; amd. Sec.
5, Ch. 190, L. 1955; amd. Sec. 5, Ch. 170,
L. 1963.

Amendment

The 1963 amendment inserted "coal" after "crude petroleum" in three places.

8-207. (3854) Discrimination prohibited—establishment of rates. No such common carrier in its operations as such shall discriminate between or against shippers in regard to facilities furnished or service rendered or rates charged under same or similar circumstances in the transportation of crude petroleum, coal, or the products thereof; nor shall there be any discrimination in the transportation of crude petroleum, coal, or the products thereof produced or purchased by itself directly or indirectly. In this connection the pipe line shall be considered as a shipper of the crude petroleum, coal, or the products thereof produced or purchased by itself directly or indirectly and handled through its facilities. No such carrier in such operation shall directly or indirectly charge, demand, collect, or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided, this shall not limit the right of the board of railroad commissioners of Montana to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places, as it may determine; nor shall any carrier be guilty of discrimination when obeying any order of the board of railroad commissioners of Montana. When there shall be offered for transportation more crude petroleum, coal, or the products thereof than can be immediately transported, the same shall be equitably apportioned. The board of railroad commissioners of Montana may make and enforce general or specific regulations in this regard. No such common carrier shall at any time be required to receive for shipments from any person, firm, corporation, or association of persons, exceeding three thousand (3,000) barrels of petroleum or the products thereof in any one day.

History: En. Sec. 7, Ch. 8, Ex. L. 1921;
re-en. Sec. 3854, R. C. M. 1921; amd. Sec.
5, Ch. 190, L. 1955; amd. Sec. 6, Ch. 170,
L. 1963.

Amendment

The 1963 amendment inserted "coal" after "crude petroleum" in four places.

8-210. (3857) Duty to transport without discrimination. Subject to the provisions of this act and the rules and regulations which may be

prescribed by the board of railroad commissioners of Montana, every such common carrier shall receive and transport crude petroleum, or coal, delivered to it for transportation and shall so receive and transport same and perform its other duties with respect thereto without discrimination.

History: En. Sec. 10, Ch. 8, Ex. L. 1921; re-en. Sec. 3857, R. C. M. 1921; amd. Sec. 7, Ch. 170, L. 1963.

Amendment

The 1963 amendment inserted "or coal" after "crude petroleum."

CHAPTER 4—CARRIERS OF PERSONS, PROPERTY AND MESSAGES—DUTIES AND OBLIGATIONS

8-405. (7815) General duties of carrier.

Application of Statute

Although this statute imposes upon the carrier the duty to exercise "the highest degree of care," it is but declaratory of the common law and does not constitute the carrier an insurer of the passenger's safety. *Wilson v. Northland Greyhound Lines, Inc.*, 166 F Supp 667, 669.

While a carrier is not an insurer of a passenger's safety, yet its duty toward a passenger is spelled out in this section. *Risken v. Northern Pac. Ry. Co.*, 137 M 57, 350 P 2d 831, 837.

CHAPTER 5—BILLS OF LADING

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

8-501 to 8-507. (7828 to 7834) Repealed.

Repeal

These sections (Secs. 2830 to 2836, Civ. C. 1895; Sec. 1, p. 154, L. 1901; Secs. 5314 to 5320, Rev. C. 1907; Secs. 7828 to 7834,

R. C. M. 1921), relating to bills of lading, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

CHAPTER 7—COMMON CARRIERS IN GENERAL

Section 8-709. Effect of written contract.

8-709. (7854) Effect of written contract. A passenger, consignor, or consignee, by accepting a ticket, bill of lading, or written contract for carriage, with a knowledge of its terms, assents to the rate of hire, the time, place, and manner of delivery therein stated. But his assent to any other modification of the carrier's rights or obligations contained in such instrument can be manifested only by his signature to the same, except as otherwise provided in the Uniform Commercial Code. [Effective January 1, 1965.]

History: En. Sec. 2878, Civ. C. 1895; re-en. Sec. 5340, Rev. C. 1907; re-en. Sec. 7854, R. C. M. 1921; amd. Sec. 11-105, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2176. Field Civ. C. Sec. 1142.

Amendment

The 1963 amendment added "except as otherwise provided in the Uniform Commercial Code" at the end of the section.

CHAPTER 8—COMMON CARRIERS OF PERSONS, PROPERTY AND MESSAGES, THEIR RIGHTS AND OBLIGATIONS

8-816 to 8-818. (7871 to 7873) Repealed.

Repeal

These sections (Secs. 2914 to 2916, Civ. C. 1895), relating to the responsibility of

carriers for the delivery of freight, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

TITLE 9—CEMETERIES

Chapter 6. Authority over disposition of remains in mausoleums or columbariums—records, 9-604.

CHAPTER 1—CEMETERY ASSOCIATIONS—INCORPORATION OF

9-121. (6489) Trustee or trustees of funds to be appointed, etc.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see Table A, M. R. Civ. P. (sec. 93-2711-7).

CHAPTER 6—AUTHORITY OVER DISPOSITION OF REMAINS IN MAUSOLEUMS OR COLUMBARIUMS—RECORDS

Section 9-604. Limitation of actions against mausoleum-columbarium—funeral directors and morticians exempt from liability.

9-604. Limitation of actions against mausoleum-columbarium—funeral directors and morticians exempt from liability. No action shall lie against any mausoleum-columbarium authority relating to the remains of any person which have been left in its possession for a period of two (2) years, unless a written contract has been entered into with the mausoleum-columbarium authority for their care or unless permanent interment has been made. Nothing in this section shall be construed as an extension of the existing statute prescribing the period within which an action based upon a tort must be commenced. No licensed mortician or funeral director shall be liable in damages for any cremated human remains after the remains have been deposited with a mausoleum-columbarium authority in the state of Montana.

History: En. Sec. 26, Ch. 35, L. 1949; amd. Sec. 22, Ch. 41, L. 1963.

Amendment

The 1963 amendment inserted "mortician or" before "funeral director" in the last sentence.

Separability Clause

Section 23 of Ch. 41, Laws 1963 read "Severability clause. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are sev-

erable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 24 of Ch. 41, Laws 1963 read "Repeal. Sections 82-701, 82-702, 82-703, 82-704, 82-705, 82-706, 82-707, 82-708, 82-709, 82-710 and 82-711, R. C. M., 1947, are repealed."

CHAPTER 7—CORPORATIONS FOR OPERATION OF MAUSOLEUMS OR COLUMBARIUMS—POWERS

9-705. Powers to make rules and regulations.

Compiler's Note

The reference in this section to sections 9-606 to 9-614 should read sections 9-706 to 9-714.

CHAPTER 8—DEDICATION OF MAUSOLEUM OR COLUMBARIUM
PROPERTY—PLATS—PROPERTY RIGHTS IN PLOTS

9-816. Removal of dedication by order of court.

Cross-Reference

Application of Montana Rules of Civil
Procedure to proceeding for removal, see
Table A, M. R. Civ. P. (sec. 93-2711-7).

TITLE 10—CHILDREN AND CHILD WELFARE

- Chapter 1. Children's center, 10-101, 10-101.1, 10-105, 10-110 to 10-114, 10-118 to 10-121.
5. Dependent and neglected children—proceedings for protection, 10-507.
6. Juvenile courts and proceedings against juvenile delinquents, 10-602, 10-611, 10-617, 10-622, 10-633.

CHAPTER 1—CHILDREN'S CENTER

- Section 10-101. Establishment of home.
10-101.1. Change of name of home.
10-105. Qualifications and powers of superintendent.
10-110. Free education of inmates of children's center, industrial school and girls' vocational school at university of Montana.
10-111. Expenses of education, how borne.
10-112. Record to be kept of habits and scholarship of inmates—selection of students.
10-113. Department of public institutions to designate institution inmate to attend.
10-114. Inmates attending university remain subject to control of institution from which sent.
10-118. Application for admission.
10-119. Court may commit children.
10-120. Age limit.
10-121. Incurrigible children.

10-101. (1484) **Establishment of home.** There is hereby established, to be located and permanently maintained at or within one mile of the town of Twin Bridges, in the county of Madison, a "Montana Children's Center" for the support and care of orphans, foundlings, and destitute children resident within the state of Montana.

History: En. Sec. 1, p. 189, L. 1893; re-en. Sec. 2470, Pol. C. 1895; re-en. Sec. 1249, Rev. C. 1907; re-en. Sec. 1484, R. C. M. 1921; amd. Sec. 69, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "a 'Montana Children's Center'" for "a home."

10-101.1. **Change of name of home.** Hereafter, the state orphan's home at Twin Bridges, Montana will be known and designated as "Montana Children's Center."

History: En. Sec. 1, Ch. 19, L. 1959.

Repealing Clause

Title of Act

An act to change the name of the state orphan's home at Twin Bridges, Montana, to "Montana Children's Center"; providing for a repealing clause.

Section 2 of Ch. 19, Laws 1959 repealed all acts and parts of acts in conflict therewith.

10-103, 10-104. (1486, 1487) **Repealed.**

Repeal

These sections (Sec. 1, Ch. 68, L. 1921), relating to general supervision of the

children's center and providing for a superintendent and a matron, were repealed by Sec. 82, Ch. 266, Laws 1963.

10-105. (1488) **Qualifications and powers of superintendent.** The superintendent of the Montana children's center, who is the administrative head of the center, shall be a person of acknowledged ability and fitness for his office, and shall sustain a good moral character.

History: En. Sec. 2480, Pol. C. 1895; re-en. Sec. 1259, Rev. C. 1907; re-en. Sec. 1488, R. C. M. 1921; amd. Sec. 70, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "the Montana children's center" for "the home"; inserted "who is the administrative head of the center"; and deleted sentences reading, "He shall have entire control of the educational, moral, and dietetic treat-

ment of the inmates and pupils, and shall see that the several employees in the institution faithfully and diligently discharge their respective duties. He shall employ such attendants, nurses, servants, and such other persons as he may deem necessary for the efficient and economical management of the institution, and assign them their respective places and duties. The superintendent and matron shall devote their entire time to the interests of the home."

10-106 to 10-109. (1489 to 1492) Repealed.

Repeal

These sections (Secs. 2481, 2482, 2486, Pol. C. 1895; Secs. 1260, 1261, 1265, Rev. C. 1907; Sec. 1, Ch. 162, L. 1919; Secs.

1489 to 1492, R. C. M. 1921), relating to the matron's duties and to training of inmates, were repealed by Sec. 82, Ch. 266, Laws 1963.

10-110. (1493) Free education of inmates of children's center, industrial school and girls' vocational school at university of Montana. Any inmate of the Montana children's center, the state industrial school, or the state vocational school for girls, who, shall have completed the course of study of any of said institutions and shall have shown evidence of studious and industrious habits, shall be entitled upon the recommendation of the superintendent of any of said institutions, and the department of public institutions, to receive free education at the expense of the state for a period not to exceed four (4) years, at any unit of the university of Montana, and shall likewise be entitled to receive at the expense of the state the necessary high school or other training, if any be needed, to enable such student to enter any of the institutions of higher learning herein mentioned.

History: En. Sec. 2, Ch. 162, L. 1919; re-en. Sec. 1493, R. C. M. 1921; amd. Sec. 1, Ch. 198, L. 1935; amd. Sec. 71, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "Montana children's center" for "Montana state orphans' home"; deleted "and local executive board" after "recommendation of the superintendent"; and inserted "and the department of public institutions."

10-111. (1494) Expenses of education, how borne. Each of the respective institutions enumerated in section 10-110 of this code shall bear the expense of the education herein provided for and all bills for the same shall be presented and paid in the same manner as are other expenses incurred by said institutions. The expenses which shall be paid for each student shall consist of the actual necessary cost of transportation, board and room, clothing, books and stationery, and shall not exceed in all the sum of eight hundred dollars (\$800) per year for each student. No fee, tuition or other charge shall be made any such student by any of the state educational institutions enumerated in section 10-110.

History: En. Sec. 3, Ch. 162, L. 1919; re-en. Sec. 1494, R. C. M. 1921; amd. Sec. 2, Ch. 198, L. 1935; amd. Sec. 1, Ch. 128, L. 1963.

Amendment

The 1963 amendment increased expenses paid for each student from \$400 to \$800.

Effective Date

Section 2 of Ch. 128, Laws 1963 read "This act is effective September 1, 1963."

10-112. (1495) Record to be kept of habits and scholarship of inmates—selection of students. It shall be the duty of the superintendents of each of the respective institutions enumerated in section 10-110 of this code to keep a record of the habits and scholarship of all inmates of said institutions, and said superintendents shall annually on or before the first day of August of each year, certify to the state board of education the names of all inmates of said institutions designated as eligible to the free education provided for in this act. Not more than two (2) persons per year from each of the institutions enumerated in section 10-110 of this code shall be designated as eligible to the benefits of this act. Said superintendents shall fairly and impartially select from their respective institutions the two (2) inmates thereof as eligible to the free education provided for by this act.

History: En. Sec. 4, Ch. 162, L. 1919; re-en. Sec. 1495, R. C. M. 1921; amd. Sec. 3, Ch. 198, L. 1935; amd. Sec. 72, Ch. 266, L. 1963.

executive board" or "boards"; and deleted "chosen by the superintendent and local executive board" which followed "two (2) inmates thereof" in the final sentence.

Amendment

The 1963 amendment substituted "superintendents" in three places for "local

10-113. (1496) Department of public institutions to designate institution inmate to attend. The department of public institutions shall designate the educational institution to which each student shall be sent, including the designation of the high school or other preparatory school; provided, however, that in all cases persons eligible to the benefits of this act must first complete the course of study given in the institution to which they have been committed and must, so far as possible, fit themselves, while at said institutions for the higher education herein provided for.

History: En. Sec. 5, Ch. 162, L. 1919; re-en. Sec. 1496, R. C. M. 1921; amd. Sec. 4, Ch. 198, L. 1935; amd. Sec. 73, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "The department of public institutions" at the beginning of the section for "The local executive board of the several institutions designated in section 10-110 of this code."

10-114. (1497) Inmates attending university remain subject to control of institution from which sent. Any inmate of the several institutions mentioned in section 10-110 of this code, while attending high school, college, or any other educational institution mentioned in this act, shall remain subject to the control of the institution to which such person was committed and said institution shall have the authority to discontinue the free education of any such student for violation of any of the regulations of such institution or whenever, in the judgment of the superintendent of the institution, the character, habits, or scholarship of said students are such that he or she no longer merits the benefits of this act.

History: En. Sec. 6, Ch. 162, L. 1919; re-en. Sec. 1497, R. C. M. 1921; amd. Sec. 5, Ch. 198, L. 1935; amd. Sec. 74, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "the institution" for "the executive board of the institution" after "subject to the con-

trol of"; substituted "institution" for "board" before "shall have the authority to"; and substituted "the superintendent

of the institution" for "said board" after "in the judgment of."

10-115 to 10-117. (1498 to 1500) Repealed.

Repeal

These sections (Secs. 22, 25, pp. 193, 194, L. 1893; Secs. 2488, 2491, 2494, Pol. C. 1895; Secs. 1267, 1270, 1273, Rev. C.

1907; Secs. 1498 to 1500, R. C. M. 1921), relating to funds and property of the children's center, were repealed by Sec. 82, Ch. 266, Laws 1963.

10-118. (1503) Application for admission. When it is desired to place any child in the Montana children's center, application shall first be made to the judge of the district court, and said court shall require the county board of public welfare, to make a full and complete investigation of said application and the facts and circumstances relating thereto, and to present such facts with a petition for admission to the Montana children's center to the said judge, in whom shall be vested the authority to make commitment.

History: En. Sec. 4, Ch. 40, L. 1903; re-en. Sec. 1277, Rev. C. 1907; re-en. Sec. 1503, R. C. M. 1921; amd. Sec. 1, Ch. 82, L. 1929; amd. Sec. 75, Ch. 266, L. 1963.

for "said state orphans' home"; and substituted "the county board of public welfare" for "the state bureau of child protection, or some individual designated by said court."

Amendment

The 1963 amendment substituted "the Montana children's center" in two places

10-119. (1504) Court may commit children. Whenever in divorce proceedings the district court shall deem the parents improper persons to have the care, custody or control of children of the marriage, or whenever the abuse of parental authority shall be established by an action brought for that purpose, or whenever deemed for the best interest of children as shown by an investigation made by the department of public welfare, or by an individual designated by the court, the court may order the child or children committed to the Montana children's center.

History: En. Sec. 5, Ch. 40, L. 1903; re-en. Sec. 1278, Rev. C. 1907; re-en. Sec. 1504, R. C. M. 1921; amd. Sec. 2, Ch. 82, L. 1929; amd. Sec. 7, Ch. 213, L. 1963.

tana children's center" for "bureau of child protection" and "state orphans' home"; and deleted provisions for requiring the parents to pay the child's expenses, for text of which see parent volume.

Amendment

The 1963 amendment substituted "department of public welfare" and "Mon-

10-120. (1505) Age limit. After any child shall have reached the age of sixteen years, the superintendent, with the consent of the department of public institutions, may discharge him from the center or return him to the county from whence he came; having always in mind due regard for his welfare in so doing.

History: En. Sec. 6, Ch. 40, L. 1903; re-en. Sec. 1279, Rev. C. 1907; re-en. Sec. 1505, R. C. M. 1921; amd. Sec. 76, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "the superintendent, with the consent of the department of public institutions" for "the local executive board"; and substituted "center" for "home."

10-121. (1506) Incurable children. Whenever any child, an inmate of the children's center, shall be incurable, or shall by continuous vicious

or immoral conduct be a menace to the welfare of the other wards of the home, the superintendent, under the direction of the department of public institutions, shall make complaint to the county attorney, who shall thereupon bring proceedings in the district court against such accused child, and if in the opinion of the district judge such charges are sustained by competent evidence, he shall order the accused committed to the Montana state industrial school or vocational school for girls. The provisions of section 80-801 to 80-827, relating to the state industrial school, shall be applicable to this section.

History: En. Sec. 7, Ch. 40, L. 1903; re-en. Sec. 1280, Rev. C. 1907; re-en. Sec. 1506, R. C. M. 1921; amd. Sec. 77, Ch. 266, L. 1963.

stituted "department of public institutions" for "local executive board"; and added "or vocational school for girls" at the end of the first sentence.

Amendment

The 1963 amendment substituted "children's center" for "orphans' home"; sub-

CHAPTER 5—DEPENDENT AND NEGLECTED CHILDREN—PROCEEDINGS FOR PROTECTION

Section 10-507. Hearing of petition—evidence regarding financial ability of parents—court order—allocation of cost.

10-501. (10465) Dependent and neglected children—definition.

Cross-Reference

Application of Montana Rules of Civil Procedure to this chapter, see Table A, M. R. Civ. P. (sec. 93-2711-7).

References

Cited or applied in Application of Banschbach, 133 M 312, 323 P 2d 1112, 1113.

10-503. (10467) Application to courts with reference to dependent, etc.

Residence of Petitioner

Since the court's jurisdiction had to be determined as of the time a proceeding was commenced, the issue of the petitioner's residence did not become moot even though the petitioner had established the necessary residence since the hearing in the proceeding. State ex rel. Cowan v. District Court, 131 M 502, 312 P 2d 119, 123.

The word "resident" as used in this section must denote one actually domiciled within the county and in a proceeding to have a child declared dependent and neg-

lected, where the petitioner was not a resident of the county where the child resided, the court was without jurisdiction to proceed. State ex rel. Cowan v. District Court, 131 M 502, 312 P 2d 119, 122, 123.

Where petitioner was not domiciled, and thus not a resident of the county where the child resided, the court was without power to attempt to confer jurisdiction by an amendment to conform to the alleged proof that petitioner was domiciled in such county. State ex rel. Cowan v. District Court, 131 M 502, 312 P 2d 119, 123.

10-504. (10468) Citation and procedure.

References

Cited or applied in State ex rel. Cowan v. District Court, 131 M 502, 312 P 2d 119, 121.

10-505. State department of public welfare successor to bureau, etc.

References

Cited or applied in State ex rel. Cowan v. District Court, 131 M 502, 312 P 2d 119, 121.

10-507. Hearing of petition—evidence regarding financial ability of parents—court order—allocation of cost. On the hearing the court may hear evidence regarding the financial ability of any such parents or parent, to pay such cost, and may take into consideration the report of such investigation filed with the clerk of the court, as provided in section 10-506. And if, on such hearing, the court shall find and determine that said child has parents, or a parent, who is financially able to pay a part or the whole of such cost, and such child shall be ordered placed in the said Montana children's center, or placed in a foster home, the court shall make an order requiring such parents, or parent, to pay therefor such amount as the court may deem proper, and if on such hearing any child shall be ordered placed in the said Montana children's center, the county in which such child resides shall pay to said Montana children's center twenty-five dollars (\$25.00) per month for such time as the child shall remain therein, and in turn shall collect in its own name from any parent or parents such amount, if any, as the court has specified in its order to be paid by such parent or parents. If such child be placed in a foster home the state department of public welfare shall pay one-half ($\frac{1}{2}$) of the cost thereof, and the county in which such child resides shall pay the other one-half ($\frac{1}{2}$) thereof, and in turn shall collect in its own name from any parent or parents such amount, if any, as the court has specified in its order to be paid by such parent or parents, provided that one-half ($\frac{1}{2}$) of any amount collected by the county from a parent or parents, when a child is placed in a foster home, shall be transmitted to the state department of public welfare, and by it paid over to the state treasurer, who shall deposit the same to the credit of the state general fund.

History: En. Sec. 3, Ch. 145, L. 1943; amd. Sec. 1, Ch. 170, L. 1961.

Amendment

The 1961 amendment substituted the words "Montana children's center" for

"orphans' home" each time they appear and increased the county contribution specified in the second sentence from \$10.00 to \$25.00.

CHAPTER 6—JUVENILE COURTS AND PROCEEDINGS AGAINST JUVENILE DELINQUENTS

- Section 10-602. Definitions.
 10-611. Hearing—judgment.
 10-617. Penalty for improper and negligent training of children.
 10-622. Probation officers—appointments—removal—salaries.
 10-633. Publicity forbidden.

10-601. Construction and purpose of the act.

Cross-Reference

Application of Montana Rules of Civil Procedure to this chapter, see Table A, M. R. Civ. P. (sec. 93-2711-7).

Repeal of Conflicting Laws

By the enactment of chapter 227, Laws of 1943, and its amendments covering juveniles and creating juvenile courts, the legislature intended to repeal all prior

laws in conflict therewith, and amended the general criminal code insofar as it conflicts with the statutes relating to juveniles. State ex rel. Dahl v. District Court, 134 M 395, 333 P 2d 495, 499.

References

Cited or applied in Application of Bansbach, 133 M 312, 323 P 2d 1112, 1113.

10-602. Definitions. (1). * * * [Same as parent volume].

(2) The words "delinquent child" include:

(a) A child who has violated any ordinance of any city.

(b) A child who has violated any law of the state, provided, however, a child over the age of sixteen (16) years who commits or attempts to commit murder, manslaughter, rape when committed under the circumstances specified in subdivision 3 and 4 of section 94-4101, R.C.M. 1947, arson in the first and second degree, assault in the second degree, assault in the first degree, robbery, first or second degree burglary while having in his possession a deadly weapon, and carrying a deadly weapon or weapons with intent to assault, shall not be proceeded against as a juvenile delinquent but shall be prosecuted in the criminal courts in accordance with the provisions of the criminal laws of this state governing the offenses above listed.

(c) A child who by reason of being wayward or habitually disobedient is uncontrolled by his parent, guardian, or custodian.

(d) A child who is habitually truant from school or home.

(e) A child who habitually so deports himself as to injure or endanger the morals or the health of himself or others.

(f) A child who unlawfully, negligently, dangerously, or wilfully operates a motor vehicle on the highways of the state or on the roads and streets of any county or city so as to endanger life or property, and a child who operates a motor vehicle on such highways, roads or streets while intoxicated or under the influence of intoxicating liquor.

History: En. Sec. 2, Ch. 227, L. 1943; amd. Sec. 1, Ch. 276, L. 1947; amd. Sec. 1, Ch. 24, L. 1963.

was not in compliance with section 10-606. State v. Johnson, — M —, 374 P 2d 504, 506.

Amendment

The 1963 amendment inserted the words "rape when committed under the circumstances specified in subdivision 3 and 4 of section 94-4101, R. C. M. 1947, arson in the first and second degree, assault in the second degree" in paragraph (2) (b).

Citation to Parents

Although youths admitted violations contained in the petition while on the stand, court was without jurisdiction to order commitment where second hearing proceeded upon citation to parents which

Criminal Court Jurisdiction

The words "and carrying a deadly weapon or weapons with intent to assault" do not modify robbery or any of the other specifically listed crimes; therefore, as to the crime of robbery, possession of a weapon need not be charged. State ex rel. Keast v. District Court, 136 M 367, 348 P 2d 135. (Dissenting opinion, 136 M 367, 348 P 2d 135, 139.)

References

Cited in State ex rel. Dahl v. District Court, 134 M 395, 333 P 2d 495, 497.

10-603. Jurisdiction.**Right to Trial by Jury**

Where a minor, charged with being a delinquent, made a demand for a jury trial on the day preceding the trial and at the opening of the trial, the court was without jurisdiction to try him without a jury. Application of Banschbach, 133 M 312, 323 P 2d 1112, 1113.

A child under the age of 16 years may never be tried for a law violation in the district court. He is solely under the exclusive jurisdiction of the juvenile court. State ex rel. Dahl v. District Court, 134 M 395, 333 P 2d 495, 498, 499.

References

In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

10-604. Jury.**References**

Cited or applied in Application of Banschbach, 133 M 312, 323 P 2d 1112,

1115; In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

10-605. Information—investigation—petition.**Informal Hearing**

This section and section 10-611 must be read together and the informal manner in which a hearing may be conducted as provided in section 10-611 refers to the preliminary inquiry provided for in this section. In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

Substance of Petition

The substance of the petition under this section must be the facts which bring the child within the provisions of section 10-602. State v. Johnson, — M —, 374 P 2d 504, 506.

10-606. Citation—notice—custody of the child.**Defective Citation**

A citation was fatally defective where it failed to recite substance of petition. State v. Johnson, — M —, 374 P 2d 504, 506.

tional if the parties voluntarily appear. In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

Jurisdiction

The issuance of a citation in a delinquent child proceeding is not jurisdic-

References

In re Allamaras, 139 M 130, 361 P 2d 340.

10-607. Service of citation.**Personal Service**

Service of the citation on an adult brother of the child's father at the father's home was not sufficient service on the father. In re Allamaras, 139 M 130, 361 P 2d 340.

References

In re Gonzalez, 139 M 592, 366 P 2d 718, 720; State v. Johnson, — M —, 374 P 2d 504, 505.

10-610. Transfer from other courts.**Criminal Information**

District criminal court has no jurisdiction to authorize or order the filing of a criminal information against a juvenile child of the age of 15 years and less than

16 years of age, nor to try such child in the district court. State ex rel. Dahl v. District Court, 134 M 395, 333 P 2d 495, 497.

10-611. Hearing—judgment. The court may conduct the hearing in an informal manner and may adjourn the hearing from time to time. In the hearing of any juvenile case, as distinguished from a case involving a child charged with the commission of or attempt to commit any of the criminal offenses set out in subdivision (2)(b) of section 10-602, the general public shall be excluded and only such persons admitted as have a direct interest in the case; provided, however, that whenever the hearing in the juvenile court is had on a written petition charging the commission of any felony, persons having a legitimate interest in the proceeding, including responsible representatives of public information media, shall not be excluded from such hearing. All cases involving children shall be heard separately and apart from the trial of cases against adults.

If the court shall find that the child is delinquent within the provisions of this act, it may by order duly entered proceed as follows:

(1) Place the child on probation or under supervision upon such terms as the court shall determine.

(2) Commit the child to a suitable public institution or agency or to a suitable private institution or agency incorporated under the laws of the state, approved by the state department of public welfare, and authorized to care for children; or to place them in suitable foster homes, approved by the department of public welfare, or the probation department.

(3) Order such further care and treatment as the court may deem best for the best interests of the child, except as herein otherwise provided.

No commitment of any such delinquent child to any institution under this act shall be deemed commitment to a penal institution. No adjudication upon the status of any delinquent child in the jurisdiction of the court shall operate to impose any of the civil disabilities ordinarily imposed by conviction, nor shall any delinquent child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction, nor shall any child be charged with or convicted of any crime in any court except as provided in the preceding section of this act. The disposition of the delinquent child or any evidence given in the court shall not be admissible as evidence against the child in any other case or proceeding.

Whenever the court shall commit a delinquent child to any institution or agency, it shall transmit with the order of commitment a summary of its information concerning such child.

Whenever a child or an adult under the age of twenty-one (21) years is convicted of a felony or felonies or attempt to commit a felony or felonies and is sentenced to imprisonment in the state prison, he shall, throughout the term of imprisonment or until such time as he reaches the age of twenty-one (21) years, be kept separate and apart at all times from those inmates who are over the age of twenty-one years.

History: En. Sec. 10, Ch. 227, L. 1943; amd. Sec. 5, Ch. 276, L. 1947; amd. Sec. 1, Ch. 132, L. 1961.

Amendment

The 1961 amendment added the proviso to the second sentence of the first paragraph.

Due Process

Even though a hearing may be informal, the requirements of due process must be met; where there was no sworn testimony, no proof, no representation by counsel, no proper citation to the parent, and no hearing in fact, an order of commitment to the industrial school was reversible. In re Allamaras, 139 M 130, 366 P 2d 340, explained in 366 P 2d 718, 720.

Informal Hearing

This section and section 10-605 must be read together and the informal man-

ner in which a hearing may be conducted as provided in this section refers to the preliminary inquiry provided for in section 10-605. In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

An informal trial is improper when the hearing is upon a petition of county attorney charging a minor child, sixteen years of age, with being a delinquent child, which could result in commitment. In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

Stenographic Record of Evidence

Proceeding upon a petition of county attorney charging minor with being a delinquent child, resulting in commitment of child to industrial school, was remanded to district court where no stenographic record had been made of the evidence presented in the juvenile court. In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

10-617. Penalty for improper and negligent training of children. Any parent or parents, legal guardian, or any other person who shall encourage, wilfully cause or contribute to, or through negligence in the care, custody, guidance, education, maintenance, or direction of any child under

eighteen years of age, cause or permit such child to violate any law of this state, or the ordinance or ordinances of any city of this state, or to be or become incorrigible, or to knowingly associate with thieves, vicious or immoral persons; or to grow up in idleness or crime, or to knowingly enter a house of prostitution; or to knowingly visit or patronize any place, house, or apartment building where any gambling device is or gambling devices are or shall be operated or run, or where any gambling is done or conducted, or to patronize or visit any saloon or saloons, or dram shop or dram shops, where intoxicating liquors are sold, or to wander about the streets of any town or city in the nighttime, without being on lawful business or occupation, or to habitually wander about or visit any railroads or tracks, or to jump or hook on to any moving train or to enter any car or engines, without lawful authority; to use habitually any vile, obscene, vulgar, profane, or indecent language, or to be guilty of immoral conduct in any public place, or about any schoolhouse or grounds, or keep or permit it in or about any saloon or place where spirituous liquors or intoxicating liquors are sold, or in any gambling house or place where gambling is practiced, or in a house of ill fame or prostitution; or to become addicted to the use of spirituous and intoxicating liquors not for medicinal purposes prescribed by a physician; shall be guilty of a misdemeanor and upon trial and conviction thereof shall be fined in a sum not less than ten dollars (\$10.00) and not to exceed one thousand dollars (\$1,000.00), or imprisonment in the county jail for a period not exceeding nine (9) months, or by both such fine and imprisonment.

History: En. Sec. 16, Ch. 227, L. 1943; amd. Sec. 1, Ch. 22, L. 1959.

Amendment

The 1959 amendment inserted the word "any" after the words "legal guardian, or" near the beginning of this section; deleted the words "or to patronize or visit any public poolroom or poolrooms, or

bucketshop" which appeared after the words "where intoxicating liquors are sold"; made the word "railroad" plural, and deleted the word "yards" which had appeared after the word "railroad."

Repealing Clause

Section 2 of Ch. 22, Laws 1959 repealed all acts and parts of acts in conflict therewith.

10-622. Probation officers—appointments—removal—salaries. In every judicial district of the state of Montana the judge thereof having jurisdiction of juvenile matters may appoint one discreet person of good moral character, who shall be known as the chief probation officer of such district and who shall hold his office until removed by the court. Such officer shall receive for his services such sum as shall be specified by the court upon appointment, provided that the judge of the district court may employ him on a yearly salary not to exceed six thousand dollars (\$6,000.00), or on a per diem basis for the time actually and necessarily employed in performing the duties of the office. The salary of such officer shall be apportioned among and paid by each of said counties in which said officer shall be appointed to act, in proportion to the assessed valuation of such counties for the year then current, except that where such official is appointed for one county, his salary shall be paid by that county.

The judge having jurisdiction of juvenile matters may also appoint such additional persons to serve as deputy probation officers as the judge

deems necessary; their salaries to be fixed by the judge at the time of appointment, provided that such salaries shall not exceed ninety per cent (90%) of the salary of the chief probation officer.

History: En. Sec. 21, Ch. 227, L. 1943; amd. Sec. 1, Ch. 116, L. 1947; amd. Sec. 1, Ch. 27, L. 1951; amd. Sec. 1, Ch. 112, L. 1953; amd. Sec. 1, Ch. 36, L. 1955; amd. Sec. 1, Ch. 177, L. 1957; amd. Sec. 1, Ch. 166, L. 1961; amd. Sec. 1, Ch. 115, L. 1963.

Amendments

The 1961 amendment increased the yearly salary specified in the second sentence of the first paragraph from \$4,800 to \$5,400; and, at the end of the section, deleted "or four thousand three hundred twenty dollars (\$4,320.00) per year."

The 1963 amendment increased the yearly salary specified in the second sentence of the first paragraph from \$5,400 to \$6,000.

10-629. County attorney to prosecute.

References

In re Gonzales, 139 M 592, 366 P 2d 718, 720.

10-630. Appeals.

Bill of Exceptions

A juvenile who appeals from a commitment by virtue of the provisions of this section has the right to have the evidence presented in the district court

Repealing Clauses

Section 2 of Ch. 166, Laws 1961 and Sec. 2 of Ch. 115, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 166, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 6, 1961.

Section 3 of Ch. 115, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

settled in a bill of exceptions and brought before the supreme court for a review under section 93-5505. In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

10-633. Publicity forbidden. No publicity shall be given to the identity of an arrested juvenile or to any matter or proceeding in the juvenile court involving children proceeded against as, or found to be, delinquent children, except where a hearing or proceeding is had in the juvenile court on a written petition charging the commission of any felony.

History: En. Sec. 12, Ch. 276, L. 1947; amd. Sec. 2, Ch. 132, L. 1961.

Amendment

The 1961 amendment, after the words "shall be given" inserted the words "to the identity of an arrested juvenile or" and at the end of the section, added "except where a hearing or proceeding is had in the juvenile court on a written petition charging the commission of any felony."

Repealing Clause

Section 3 of Ch. 132, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 132, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 2, 1961.

TITLE 11—CITIES AND TOWNS

- Chapter 4. Additions of platted tracts to cities and towns, 11-403.
6. Plats of cities and towns and additions thereto, 11-616.
 7. Officers and elections, 11-710, 11-713 to 11-716, 11-725, 11-726, 11-728, 11-729, 11-731.
 9. Powers of city and town councils, 11-966.
 10. Powers of city and town councils (continued), 11-1001.
 12. Contracts and franchises, 11-1202.
 13. Presentation and payment of claims—city warrants, 11-1310.
 18. Police department, metropolitan police law, 11-1804.1, 11-1806, 11-1814, 11-1823.
 19. Fire department—firemen's disability and pension fund, 11-1912, 11-1914, 11-1918 to 11-1921, 11-1925 to 11-1927.
 20. Fire protection in unincorporated towns—fire wardens, companies and districts, 11-2008, 11-2010, 11-2025, 11-2026, 11-2028, 11-2030.
 22. Special improvement districts, 11-2202, 11-2204, 11-2218, 11-2231.
 23. Municipal bonds and indebtedness, 11-2310, 11-2316.
 24. Municipal revenue bond act of 1939, 11-2402, 11-2404, 11-2414.
 32. Commission-manager form of government, 11-3215.
 35. City and county consolidated government (continued), 11-3518, 11-3523, 11-3524.
 37. Off-street parking facilities, 11-3714, 11-3721.
 38. City or city-county planning boards, 11-3801, 11-3803, 11-3804, 11-3808, 11-3810, 11-3812, 11-3813, 11-3818, 11-3820, 11-3824, 11-3825, 11-3828, 11-3830, 11-3831, 11-3833, 11-3834, 11-3840, 11-3842 to 11-3848, 11-3851, 11-3853, 11-3855.
 39. Urban renewal law, 11-3901 to 11-3920.
 40. Open ditches, 11-4001 to 11-4006.

CHAPTER 1—GENERAL POWERS OF CITIES AND TOWNS

11-104. (4958) City or town, how named, general corporate powers.

Tax Sales

County acquiring tax deeds to lots, advertised them for sale but received no offer. Purchase of lots by city being authorized by city council because of hous-

ing and sanitary conditions, it had the right to sell them at varying prices, much higher than purchase price paid to county. *Flom v. Unknown Heirs of Conrad*, 132 M 574, 319 P 2d 499, 501, 502.

CHAPTER 2—CLASSIFICATION AND ORGANIZATION OF CITIES AND TOWNS

11-201. (4959) Cities and towns classified.

References

Cited in *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 298.

CHAPTER 4—ADDITIONS OF PLATTED TRACTS TO CITIES AND TOWNS

Section 11-403. Extension of boundaries to include contiguous platted tracts or other parcels of land.

11-403. (4978) Extension of boundaries to include contiguous platted tracts or other parcels of land. (1) Cities or towns of the first class. Any tracts or parcels of land, which have been or may hereafter be platted into lots or blocks, streets, and alleys, and the map or plat thereof filed in the office of the county clerk and recorder of the county in which the same are situated, or any unplatted land that has been surveyed and for which

a certificate of survey has been filed, as provided in these codes, and which platted or unplatted land shall be contiguous to any incorporated city of the first class, may be embraced within the corporate limits thereof, and the boundaries of such city of the first class extended so as to include the same in the following manner: When, in the judgment of any city council of a city of the first class, expressed by a resolution duly and regularly passed and adopted, it will be to the best interest of such city and the inhabitants of any contiguous platted tracts or parcels of land, or unplatted land for which a certificate of survey has been filed, that the boundaries of such city shall be extended, so as to include the same within the corporate limits thereof, the city clerk of such city shall forthwith cause to be published in the newspaper published nearest such platted tracts or parcels of land, or unplatted land for which a certificate of survey has been filed, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed, and that for a period of twenty days after the first publication of such notice, such city clerk will receive expressions of approval or disapproval, in writing, of the proposed extensions of the boundaries of such city of the first class, from resident freeholders of the territory proposed to be embraced therein. The clerk shall, at the next regular meeting of the city council of such city of the first class after the expiration of said twenty days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city of the first class shall be extended so as to embrace and include such platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed, the time when the same shall go into effect to be fixed by such resolution; provided however that land used for industrial or manufacturing purposes shall not be included in such city under the provisions of this section without the consent in writing of the owners of such land, and further provided, that such resolution shall not be adopted by such council if disapproved, in writing, by a majority of the resident freeholders, if any, of the territory proposed to be embraced and no further resolutions relating to the annexation of said territory or any portion thereof may be considered or acted upon by the council on its own initiative and without petition, for a period of one year from the date of disapproval.

Provided also, that cities of the first class may include as part of such city any platted or unplatted tract or parcel of land that is wholly surrounded by such city upon passing a resolution advertising and upon passing a further resolution or following such advertising, all in the manner aforesaid, and such land shall be annexed, if so resolved, whether or not a majority of the resident freeholders, if any, of the land to be annexed object; provided, however, that land used for agricultural, mining, smelting, refining, transportation, recreational area, or any industrial or manufacturing purpose or for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery or a place for public or private outdoor entertainment or any purpose incident thereto, shall not be annexed under this provision.

(2) Cities and towns of the second and third class. Any tracts or parcels of land, which shall be contiguous to any incorporated cities or towns of the second and third class, may be embraced within the corporate limits thereof and the boundaries of such cities or towns of the second and third class extended so as to include the same in the following manner: When, in the judgment of any such city or town council, expressed by resolution duly and regularly passed and adopted, it will be to the best interest of such city, or town and the inhabitants thereof, and of the inhabitants of any contiguous tracts or parcels of land, as aforesaid, that the boundaries of such city or town shall be extended, so as to include the same within the corporate limits thereof, the city or town clerk of such city or town shall forthwith notify in writing all property holders within the boundaries of the territory proposed to be embraced, and cause to be published in the newspaper published nearest such tracts or parcels of land, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed and that for a period of twenty days after the first publication of such notice, such city or town clerk will receive expressions of approval or disapproval, in writing, of the proposed extensions of the boundaries of such city or town, from freeholders of the territory proposed to be embraced therein. The clerk shall, at the next regular meeting of the city or town council after the expiration of said twenty days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city or town of the second or third class, shall be extended so as to embrace and include such tracts or parcels of land, the time when the same shall go into effect to be fixed by such resolution; provided, that such resolution shall not be adopted by such council, if disapproved, in writing, by a majority of the freeholders of the territory proposed to be embraced.

(3) Whenever two or more adjacent tracts taken as a whole shall adjoin the city, they may be included in one resolution under subdivision (2) hereof, although one or more of said tracts taken alone may not be adjacent to the corporate limits as then existing.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R. C. M. 1921; amd. Sec. 1, Ch. 52, L. 1925; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961.

Amendments

The 1959 amendment in subd. (1) deleted the phrase "and the inhabitants thereof" which appeared after the words "best interests of such city"; added the second paragraph of subd. (1), and changed the word "caused" to "cause" which appeared after the words "proposed to be embraced, and" in subd. (2).

The 1961 amendment inserted the first proviso in the last sentence of the first paragraph of subd. (1); and, at the end of the first paragraph of subd. (1), added "and no further resolutions relating to the

annexation of said territory or any portion thereof may be considered or acted upon by the council on its own initiative and without petition, for a period of one year from the date of disapproval."

Repealing Clauses

Section 2 of Ch. 238, Laws 1959 and Sec. 2 of Ch. 217, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 238, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 11, 1959.

Section 3 of Ch. 217, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 7, 1961.

Appeal

In taxpayers' suit opposing annexation of a city subdivision where trial court found that less than the required majority had protested, it must be presumed on appeal that the lower court's proceedings are regular and contain no substantial error until otherwise shown preponderantly by the plaintiff. *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 298.

Description of Land Annexed

In annexation proceedings by a second class city the description of the land was adequate, although it omitted township and range, where the resolution stated that the land was contiguous to the boundaries of the city and referred to the intersections of streets. *Klamm v. City of Miles City*, 138 M 65, 353 P 2d 752, 754.

Disapproval by Residents

Residents of an area sought to be annexed must register their disapproval by showing such disapproval in writing to the city clerk as required by statute. They cannot do so in courts of law. *Penland v. Missoula*, 132 M 591, 318 P 2d 1089, 1092.

Time limitation for disapproval cannot be extended. *Penland v. Missoula*, 132 M 591, 318 P 2d 1089, 1092, 1093.

Discretion of City Council

City council has the discretion to determine whether or not it is in the best interests of the city and the inhabitants of the area that it be annexed. *Penland v. Missoula*, 132 M 591, 318 P 2d 1089, 1092, distinguished in 138 M 65, 67, 353 P 2d 752, 753.

Evidence of Benefits

In action for injunctive relief against resolution of intention of city council to

annex land court properly excluded all evidence relating to benefits. *Penland v. Missoula*, 132 M 591, 318 P 2d 1089, 1092.

Resident Freeholder

A freeholder becomes a resident under section 83-303 upon union of act and intent. If the intention to establish a permanent residence be ascertained, the recency of the establishment is immaterial. *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 301.

A resident freeholder qualified to protest annexation may be defined as one who is a resident within the area to be annexed, holding a present legal title to a freehold estate in real property located within the area to be annexed. *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 301.

Date through which timely protest could be received, set forth in the notice of resolution of intention to annex, as protest date, determines qualifications of resident freeholders to protest annexation. *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 301.

It is not necessary for resident freeholder to reside upon his freehold in order to protest annexation. *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 301.

Resolution of Intention

Exercise of discretion of city council in passing resolution of intention to annex land may be reviewed by court only when, and if, they have proceeded contrary to statute. *Penland v. Missoula*, 132 M 591, 318 P 2d 1089, 1092.

Unplatted Territory

Unplatted territory may be annexed by a second-class city. *Klamm v. City of Miles City*, 138 M 65, 353 P 2d 752, 753.

nexed, not the larger area of which the separating strip was a part. If the triangular separating strip is too small or too narrow to be platted, then the tracts separated by it will be deemed contiguous. *Penland v. Missoula*, 132 M 591, 318 P 2d 1089, 1093.

CHAPTER 6—PLATS OF CITIES AND TOWNS AND ADDITIONS THERETO

Section 11-616. Vacation of recorded plat.

11-616. Vacation of recorded plat. Any plat prepared and recorded as herein provided may be vacated, either in whole or in part, as provided by section 11-2803 and 11-2801, Revised Codes of Montana, 1947, and upon such vacation the title to the streets and alleys of such vacated portions,

to the center thereof, shall revert to the owners of the property adjacent to such vacated portions, provided that if any pole line, pipe line or other public utility facilities are located in any such vacated street or alley at the time of the reversion of the title thereto, the owner of such public utility facilities shall have an easement over such land to continue the operation and maintenance of such public utility facilities.

History: En. Sec. 1, Ch. 200, L. 1947; amd. Sec. 1, Ch. 152, L. 1961.

Amendment

The 1961 amendment inserted the reference to section 11-2801 and added the proviso at the end of the section.

CHAPTER 7—OFFICERS AND ELECTIONS

- Section 11-710. Qualification of mayor.
 11-713. Who eligible.
 11-714. Qualification of aldermen.
 11-715. Registration of electors.
 11-716. Qualifications of electors.
 11-725. Salaries and qualifications of mayor and aldermen.
 11-726. Salaries of police judges.
 11-728. Salary of city treasurer.
 11-729. Salary of city attorney.
 11-731. Salary of city or town clerk.

11-702. (4996) Officers of city of second and third classes.

Commissioner of Public Works

Commissioner of public works, appointed by the mayor, being a public officer of the city, was under a duty to account

for all funds which might come into his hands as such officer, including funds of public housing projects. City of Roundup v. Liebetrau, 134 M 114, 327 P 2d 810, 816.

11-710. (5004) Qualification of mayor. No person shall be eligible to the office of mayor unless he shall be at least twenty-five (25) years old and a taxpaying freeholder within the limits of the city or town, and a resident of the state for at least three years, and a resident of the city or town or an area which has been annexed by the city or town for which he may be elected mayor two years next preceding his election to said office, and shall reside in the city or town for which he shall be elected mayor during his term of office.

History: En. Sec. 8, p. 65, Ex. L. 1887; amd. Sec. 4749, Pol. C. 1895; re-en. Sec. 3225, Rev. C. 1907; re-en. Sec. 5004, R. C. M. 1921; amd. Sec. 1, Ch. 76, L. 1961.

Amendment

The 1961 amendment after the words

"twenty-five" inserted "(25)"; after the words "limits of the city" inserted the words "or town" and after the words "resident of the city" inserted the words "or town or an area which has been annexed by the city or town."

11-713. (5007) Who eligible. No person is eligible to any municipal office, elective or appointive, who is not a citizen of the United States, and who has not resided in the town or city or an area which has been annexed by such town or city for at least two years immediately preceding his election or appointment, and is not a qualified elector thereof.

History: En. Sec. 365, 5th Div. Comp. Stat. 1887; amd. Sec. 4752, Pol. C. 1895; re-en. Sec. 3228, Rev. C. 1907; re-en. Sec. 5007, R. C. M. 1921; amd. Sec. 2, Ch. 76, L. 1961.

Amendment

The 1961 amendment after the words "not resided in the town or city" inserted the words "or an area which has been annexed by such town or city."

11-714. (5008) Qualification of aldermen. No person shall be eligible to the office of alderman unless he shall be a taxpaying freeholder within the limits of a city, and a resident of the ward so electing him, or a resident of an area which has been annexed by the city or town and placed in a ward, for at least one year preceding such election.

History: En. Sec. 366, 5th Div. Comp. Stat. 1887; amd. Sec. 4753, Pol. C. 1895; re-en. Sec. 3229, Rev. C. 1907; re-en. Sec. 5008, R. C. M. 1921; amd. Sec. 3, Ch. 76, L. 1961.

Amendment

The 1961 amendment after the words "so electing him," inserted the words "or a resident of an area which has been annexed by the city or town and placed in a ward."

11-715. (5009) Registration of electors. The council must provide by ordinance for the registration of electors in any city or town, and may prohibit any person from voting at any election unless he has been registered; but such ordinance must not be in conflict with the general law providing for the registration of electors, and must not change the qualifications of electors except as in this title provided. However, when an area is annexed by a city or town after the date for registration has expired, opportunity must be provided for residents of such area to register, if otherwise qualified, for all future elections.

History: En. Sec. 4754, Pol. C. 1895; re-en. Sec. 3230, Rev. C. 1907; re-en. Sec. 5009, R. C. M. 1921; amd. Sec. 4, Ch. 76, L. 1961.

Amendment

The 1961 amendment added the last sentence.

11-716. (5010) Qualifications of electors. All qualified electors of the state who have resided in the city or town or an area which has been annexed by such city or town for six months and in the ward or an area which has been annexed and placed in a ward for thirty days next preceding the election are entitled to vote at any municipal election, including elections involving or held under the commission form of government, commission-manager plan or other form of municipal government.

History: En. Sec. 4755, Pol. C. 1895; re-en. Sec. 3231, Rev. C. 1907; re-en. Sec. 5010, R. C. M. 1921; amd. Sec. 5, Ch. 76, L. 1961.

in a ward" following "in the ward"; and added the final clause of the section, beginning with the words "including elections involving."

Amendment

The 1961 amendment inserted the words "or an area which has been annexed by such city or town" after "resided in the city or town"; inserted the words "or an area which has been annexed and placed

Effective Date

Section 6 of Ch. 76, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved February 27, 1961.

11-725. (5019) Salaries and qualifications of mayor and aldermen. The annual salary of a mayor of a city with a population of more than fifty thousand (50,000) persons, according to the last federal census, shall be not more than seven thousand two hundred dollars (\$7,200.00); the annual salary of a mayor of a city with a population of not less than twenty-five thousand (25,000) and not more than fifty thousand (50,000) persons, according to the said census, shall be not more than six thousand dollars (\$6,000.00); the annual salary of a mayor of a city of the first class, having a population of less than twenty-five thousand (25,000) persons, according to said census, must not exceed five thousand four

hundred dollars (\$5,400.00); and the annual salary of the mayor of a city of the second class must not exceed three thousand two hundred dollars (\$3,200.00); and the annual salary of the mayor of a city of the third class must not exceed one thousand seven hundred dollars (\$1,700.00); and each alderman in a city of the first class may be allowed and paid not exceeding fifteen dollars (\$15.00) per diem for each day of session, to be fixed by ordinance; and aldermen of cities of the second and third class may be allowed and paid not exceeding fourteen dollars (\$14.00) per diem for each day of session, to be fixed by ordinance, but no alderman of second and third class cities shall be paid for more than two (2) days' service during any one (1) month. The council of any town may by ordinance set compensation for a mayor and alderman at five dollars (\$5.00) per meeting, but in no event shall they be paid to exceed three (3) meetings per month. No person shall be elected to the office of mayor or alderman in any city or town who is not a resident and freeholder within the limits of the city or town.

History: En. Sec. 4764, Pol. C. 1895; re-en. Sec. 3240, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1913; re-en. Sec. 5019, R. C. M. 1921; amd. Sec. 1, Ch. 50, L. 1943; amd. Sec. 1, Ch. 188, L. 1949; amd. Sec. 1, Ch. 115, L. 1951; amd. Sec. 1, Ch. 76, L. 1953; amd. Sec. 1, Ch. 170, L. 1955; amd. Sec. 1, Ch. 179, L. 1961; amd. Sec. 1, Ch. 142, L. 1963.

Amendments

The 1961 amendment inserted at the beginning of the first sentence the first two clauses, which pertain to the salaries of mayors of cities over 25,000 population; inserted in the third clause of the first sentence (formerly the first clause) the words "having a population of less than twenty-five thousand (25,000) persons, according to said census"; deleted a proviso which followed the clause pertaining

to aldermen of first class cities and read "provided, that no alderman shall be paid for more than five (5) days' service during any one (1) month"; and inserted in the final clause of the first sentence the words "of second and third class cities."

The 1963 amendment increased salaries of mayors, in cities of the second class, from \$3,000 to \$3,200, and in cities of the third class, from \$1,500 to \$1,700; substituted the phrase "fifteen dollars (\$15.00) per diem for each day of session, to be fixed by ordinance" for the phrase "twelve dollars (\$12.00) per diem to be fixed by ordinance, for each day of session held by city council" near the end of the first sentence; increased per diem of aldermen of cities of the second and third class from \$12 to \$14; and increased compensation of town mayor and alderman from \$2 to \$5 per meeting.

11-726. (5020) Salaries of police judges. The annual salary and compensation of police judges must be fixed by ordinance, and in a city of the first class having a population of more than fifty thousand (50,000) persons according to the last federal census, must not exceed, for all services rendered five thousand four hundred dollars (\$5,400.00); and in cities of the first class with a population of not less than twenty-five thousand (25,000) and not more than fifty thousand (50,000) persons, according to the last federal census, the annual salary and compensation of police judges must not exceed, for all services rendered, five thousand one hundred dollars (\$5,100.00); in all other cities of the first class said salary and compensation must not exceed, for all services rendered, four thousand two hundred dollars (\$4,200.00); and in a city of the second class said salary and compensation must not exceed two thousand one hundred dollars (\$2,100.00); and in a city of the third class said salary and compensation must not exceed one thousand dollars (\$1,000.00); and, in addition, a police judge is entitled to receive in all civil cases the fees which are now or may hereafter be allowed justices of the peace. In all criminal

actions or proceedings arising under the criminal laws of the state, when acting as a justice of the peace or committing magistrate, he must receive no compensation whatever; provided, however, that none of the provisions of this act shall affect cities operating under the commission form of government.

History: En. Sec. 4765, Pol. C. 1895; re-en. Sec. 3241, Rev. C. 1907; amd. Sec. 1, Ch. 61, L. 1919; re-en. Sec. 5020, R. C. M. 1921; amd. Sec. 2, Ch. 76, L. 1953; amd. Sec. 2, Ch. 179, L. 1961.

Amendment

The 1961 amendment inserted in the first sentence the clauses pertaining to

cities of over 50,000 and cities of 25,000 to 50,000; substituted "all other cities of the first class" for "a city of the first class" in the first sentence; and inserted "said salary and compensation" before "must not exceed" in three different places in the first sentence.

11-728. (5022) Salary of city treasurer. The annual salary and compensation of the treasurer must be fixed by ordinance, and must be for all services rendered by such treasurer in any capacity, (except, however, in cases where a city of the third class or a town owns and operates a public utility or utilities and receives revenue therefrom as hereafter in this section provided) and no treasurer must be allowed any percentages or fees in addition thereto. In cities of the first class, the annual salary of the treasurer must not exceed five thousand dollars (\$5,000.00), in cities of the second class must not exceed thirty-four hundred dollars (\$3,400.00), and in cities of the third class it must not exceed eighteen hundred dollars (\$1,800.00), and in towns it must not exceed fifteen hundred dollars (\$1,500.00); provided, however, that where a city of the third class, or a town shall own and operate a public utility or utilities such as water supply, waterworks, gas, lighting system, or utilities similar to the foregoing, and receives the revenue derived therefrom, then the treasurer of such city, or town, may be paid additional salary or compensation to be fixed by ordinance and the duties of the treasurer with reference to the collection and safekeeping of the revenues derived from such public utilities shall likewise be fixed by ordinance and the amount of such additional salary or compensation shall be in accordance with the additional duties and responsibilities placed upon the treasurer by reason of such public utility or utilities and shall be in such amount as the council may determine.

History: En. Sec. 4767, Pol. C. 1895; re-en. Sec. 3243, Rev. C. 1907; re-en. Sec. 5022, R. C. M. 1921; amd. Sec. 1, Ch. 69, L. 1939; amd. Sec. 1, Ch. 46, L. 1947; amd. Sec. 3, Ch. 76, L. 1953; amd. Sec. 2, Ch. 170, L. 1955; amd. Sec. 3, Ch. 179, L. 1961; amd. Sec. 2, Ch. 142, L. 1963.

Amendment

The 1963 amendment increased salaries of treasurers in cities of the first class from \$4,500 to \$5,000, in cities of the second class from \$3,100 to \$3,400, in cities of the third class from \$1,500 to \$1,800, and in towns from \$1,200 to \$1,500.

Compiler's Note

Laws 1961, Ch. 179, Sec. 3 purported to amend this section but made no change therein. For 1961 text, see parent volume.

11-729. (5023) Salary of city attorney. The annual salary and compensation of the city attorney must be fixed by ordinance, and must not exceed, in cities of the first class having a population in excess of fifty

thousand (50,000) persons according to the last federal census, fifty-four hundred dollars (\$5,400.00), and in cities of the first class having a population of not less than twenty-five thousand (25,000) and not more than fifty thousand (50,000) persons according to the last federal census, the annual salary and compensation must not exceed fifty-one hundred dollars (\$5,100.00); and the annual salary and compensation of city attorneys in all other cities of the first class must not exceed four thousand five hundred dollars (\$4,500.00), and in cities of the second class must not exceed three thousand dollars (\$3,000.00), and in cities of the third class must not exceed one thousand eight hundred dollars (\$1,800.00), which compensation shall be in full for all services rendered in any capacity, and no fee, percentage or additional compensation must be given to or allowed him.

History: En. Sec. 4768, Pol. C. 1895; re-en. Sec. 3244, Rev. C. 1907; re-en. Sec. 5023, R. C. M. 1921; amd. Sec. 1, Ch. 25, L. 1943; amd. Sec. 2, Ch. 188, L. 1949; amd. Sec. 2, Ch. 115, L. 1951; amd. Sec. 4, Ch. 76, L. 1953; amd. Sec. 3, Ch. 170, L. 1955; amd. Sec. 4, Ch. 179, L. 1961.

Amendment

The 1961 amendment inserted the clauses pertaining to cities of over 50,000 and to cities of 25,000 to 50,000; and in the clause pertaining to other first class cities, inserted the words "and the annual salary and compensation of city attorneys in all other."

11-731. (5025) Salary of city or town clerk. The annual salary and compensation of the city or town clerk must be fixed by ordinance, and in cities with a population of more than fifty thousand (50,000) persons, according to the last federal census, shall be not more than six thousand four hundred dollars (\$6,400.00); in cities with a population of not less than twenty-five thousand (25,000) and not more than fifty thousand (50,000) persons, according to the last federal census, the annual salary and compensation must not exceed six thousand dollars (\$6,000.00); in cities of the first class with a population of less than twenty-five thousand (25,000) persons, according to said census, must not exceed five thousand four hundred dollars (\$5,400.00); in cities of the second class the annual salary and compensation must not exceed four thousand two hundred dollars (\$4,200.00). In cities of the third class the compensation must not exceed two thousand seven hundred dollars (\$2,700.00), and in towns must not exceed one thousand eight hundred dollars (\$1,800.00); provided, however, that nothing in this section shall be held or construed as applying to cities and towns operating under the commission form of government.

History: En. Sec. 4770, Pol. C. 1895; re-en. Sec. 3246, Rev. C. 1907; amd. Sec. 1, Ch. 14, L. 1917; re-en. Sec. 5025, R. C. M. 1921; amd. Sec. 1, Ch. 124, L. 1945; amd. Sec. 3, Ch. 188, L. 1949; amd. Sec. 3, Ch. 115, L. 1951; amd. Sec. 5, Ch. 76, L. 1953; amd. Sec. 4, Ch. 170, L. 1955; amd. Sec. 5, Ch. 179, L. 1961.

Amendment

The 1961 amendment inserted in the first sentence the two clauses pertaining to cities of over 50,000 and to cities of 25,000 to 50,000; inserted the words "with a population of less than twenty-five thousand (25,000) persons, according to

said census" in the clause pertaining to other first class cities; and inserted the words "the annual salary and compensation" in the clause pertaining to second class cities.

Repealing Clause

Section 6 of Ch. 179, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 7 of Ch. 179, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 6, 1961.

CHAPTER 9—POWERS OF CITY AND TOWN COUNCILS

Section 11-966. Purposes for which indebtedness may be incurred—limitation—additional indebtedness for sewer or water system—procuring water supply and system—jurisdiction of public works appurtenances.

11-901. (5039) Powers of city councils.

Water Main Service Charge

Under its power to provide for the general welfare of its inhabitants, a city may provide for a flat rate charge to property owners for services of its employees in tapping into the water main. *Leischner v. Knight*, 135 M 109, 337 P 2d 359.

References

Cited or applied in *McBroom v. City of Polson*, 137 M 33, 349 P 2d 1023, 1025; *City of Bozeman v. Ramsey*, 139 M 148, 362 P 2d 206, 211.

11-903. (5039.2) Licenses—requirements.

Ordinance Required

In the absence of a licensing ordinance the city is powerless to attempt to exact

license fees or to regulate the operation of any business. *State ex rel. Willumsen v. City of Butte*, 135 M 350, 340 P 2d 535.

11-904. (5039.3) Issuing licenses.

Ordinance Required

Where the city's licensing ordinance did not include the operation of a call office for dry cleaning, the city was without

jurisdiction to arrest the operator of such an establishment for conducting business without a license. *State ex rel. Willumsen v. City of Butte*, 135 M 350, 340 P 2d 535.

11-950. (5039.47) Penalties for violation of ordinances, etc.

Invalid Ordinance

A town ordinance which in effect adopted all state laws defining misdemeanors and made them town ordinances, with penalties limited as provided by this sec-

tion, was invalid as containing more than one subject in violation of the prohibition set forth in section 11-1102. *Town of White Sulphur Springs v. Voise*, 136 M 1, 343 P 2d 855, 865.

*11-966. (5039.63) Purposes for which indebtedness may be incurred—limitation—additional indebtedness for sewer or water system—procuring water supply and system—jurisdiction of public works appurtenances.

The city or town council has power: (1) To contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the following purposes, to-wit: Erection of public buildings, construction of sewers, sewage treatment and disposal plants, bridges, docks, wharves, breakwaters, piers, jetties, moles, waterworks, reservoirs and reservoir sites, lighting plants, supplying the city or town with water by contract, the purchase of fire apparatus, street and other equipment, the construction or purchase of canals or ditches and water rights for supplying the city or town with water, building, purchasing, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water, to acquire, open and/or widen any street and to improve the same by constructing, reconstructing and repairing pavement, gutters, curbs and vehicle parking strips and to pay all or any portion of the cost thereof, and the funding of outstanding warrants and maturing bonds; provided, that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness, must not, at any time, exceed five per centum (5%) of the total value of the taxable property of the city or town, as ascertained by the last assessment for state and county taxes,

said words "value of the taxable property" being used herein in the same sense as in section 6 of article XIII of the Constitution; provided, that no money must be borrowed on bonds issued for the construction, purchase, or securing of a water plant, water system, water supply, sewage treatment and disposal plant, or sewerage system, until the proposition has been submitted to the vote of the taxpayers affected thereby of the city or town, and the majority vote cast in favor thereof; and, further provided, that an additional indebtedness shall be incurred, when necessary, to construct a sewerage system or procure a water supply for the said city or town, which shall own or control said water supply and devote the revenue derived therefrom to the payment of the debt.

(2) to (4). * * * [Subdivisions (2) to (4), same as parent volume.] ✓

History: En. Subd. 64, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963. See also history of Sec. 11-901.

Amendments

The 1959 amendment in subd. (1) added the phrase "sewage treatment and disposal plants" preceding the word "bridges" and the phrase "sewage and disposal plant" following the words "water supply."

The 1963 amendment inserted in subd. (1) the words "building, purchasing, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water."

Repealing Clause

Section 2 of Ch. 38, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 2 of Ch. 158, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

Charge for Tapping Water Mains

Subdivision (4) of this section empowers the city to establish a flat rate schedule for tapping water mains located entirely within the public right of way, where the labor and materials are furnished by the city. *Leischner v. Knight*, 135 M 109, 337 P 2d 359.

11-981. (5039.78) Securing water supply.

References

Cited in *Leischner v. Knight*, 135 M 109, 337 P 2d 359, 361.

CHAPTER 10—POWERS OF CITY AND TOWN COUNCILS (continued)

Section 11-1001. Authorization of cities and towns to furnish water to industries and to persons without city limits—rates—penalty for violations.

11-1001. (5040.1) Authorization of cities and towns to furnish water to industries and to persons without city limits—rates—penalty for violations. (1) The city or town council of any city or town within the state of Montana, that owns and operates a municipal water system, to furnish water to the inhabitants of such city or town, as a public utility, shall, in addition to all other powers, have power to furnish water from such water system, to any person, factory, or other industry, located within the corporate limits of such city or town, or to any person, factory or other industry located outside the corporate limits of such city or town, at reasonable rates filed by the city or town council and approved by the public service commission [provided that delivery of water by any such city or town] to or for the use of any person, factory or other in-

dustry located outside the corporate limits of such city or town shall be made within, or at the boundary line of the corporate limits of such city or town, or from any existing water line of such city or town located outside of the corporate limits of such city or town, except as hereinafter provided.

(2) The city council of any city within the state of Montana that owns and operates a municipal water system to furnish water to the inhabitants of such city, as a public utility, shall, in addition to all other powers, have power to furnish water from such water system to the inhabitants or to any person, factory, industry or producer of farm or other products located outside of the corporate limits of such city, at reasonable rates filed by the city or town council and approved by the public service commission, and such city council is further empowered to make collections for furnishing water in the same manner as collections are made within the corporate limits.

(3). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961.

Compiler's Note

The compiler has inserted the bracketed words in subd. (1).

Amendment

The 1961 amendment substituted the words "at reasonable rates filed by the city or town council and approved by the public service commission" for the words "at rates established for like use or service to the inhabitants or industries located inside the corporate limits of such city or town" in subd. (1) and for the words "at such rates as to the said city council may

seem just and equitable" in subd. (2); deleted from subd. (1) the words shown in brackets above; and inserted near the end of subd. (1) the words "or from any existing water line of such city or town located outside of the corporate limits of such city or town."

Repealing Clause

Section 2 of Ch. 194, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 194, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 7, 1961.

11-1014. (5054) Ayes and noes must be called, etc.

References

Cited or applied in *Dimich v. Northern Pacific Ry. Co.*, 136 M 485, 348 P 2d 786, 793.

CHAPTER 11—ORDINANCES—INITIATIVE AND REFERENDUM

11-1102. (5056) Ordinances—how prepared.

One Subject

A town ordinance which, in effect, adopted all state laws defining misdemeanors and made them town ordinances, was invalid as violating the prohibition against passage of an ordinance containing more than one subject. *Town of White*

Sulphur Springs v. Voise, 136 M 1, 343 P 2d 855, 865.

References

Cited or applied in *Dimich v. Northern Pacific Ry. Co.*, 136 M 485, 348 P 2d 786, 793.

11-1106. (5060) No ordinance to be effective until thirty days, etc.

References

Cited or applied in *Dimich v. Northern Pacific Ry. Co.*, 136 M 485, 348 P 2d 786, 793.

CHAPTER 12—CONTRACTS AND FRANCHISES

Section 11-1202. Awarding contracts—advertisement—limitations—installments—sales of supplies—construction of buildings—purchases from government agencies—exemptions.

11-1202. (5070) Awarding contracts—advertisement—limitations—installments—sales of supplies—construction of buildings—purchases from government agencies—exemptions. All contracts for work, or for supplies, or for material, or for the construction of any building, for which must be paid a sum exceeding one thousand dollars (\$1,000.00), must be let to the lowest responsible bidder after advertisement for bids; provided that no contract shall be let extending over a period of three (3) years or more without first submitting the question to a vote of the taxpaying electors of said city or town. Such advertisement shall be made in the official newspaper of the city or town, if there be such official newspaper, and if not it shall be made in a daily newspaper of general circulation published in the city or town, if there be such, otherwise by posting in three (3) of the most public places in the city or town. Such advertisement if by publication in a newspaper shall be made once each week for two consecutive weeks and the second publication shall be made not less than five (5) days nor more than twelve (12) days before the consideration of bids. If such advertisement is made by posting, fifteen (15) days must elapse, including the day of posting, between the time of the posting of such advertisement and the day set for considering bids. The council may postpone action as to any such contract until the next regular meeting after bids are received in response to such advertisement, may reject any and all bids and readvertise as herein provided. The provisions of this section as to advertisement for bids shall not apply upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot or insurrection, or any other similar emergency, but in such case the council may proceed in any manner which, in the judgment of three-fourths ($\frac{3}{4}$) of the members of the council present at the meeting, duly recorded in the minutes of the proceedings of the council by aye and nay vote, will best meet the emergency and serve the public interest. Such emergency shall be declared and recorded at length in the minutes of the proceedings of the council at the time the vote thereon is taken and recorded.

When the amount to be paid under any such contract shall exceed one thousand dollars (\$1,000.00) the council may provide for the payment of such amount in installments extending over a period of not more than three (3) years; provided that when such amount is extended over a term of two (2) years at least forty per centum (40%) thereof shall be paid the first year and the remainder the second year, and when such amount is extended over a term of three (3) years, at least one-third ($\frac{1}{3}$) thereof shall be paid each year; provided that at the time of entering into such contract, there shall be an unexpended balance of appropriation in the budget for the then current fiscal year available and sufficient to meet and take care of such portion of the contract price as is payable during the then current fiscal year, and the budget for each following year, in

which any portion of such purchase price is to be paid, shall contain an appropriation for the purpose of paying the same.

Old supplies or equipment may be sold by the city or town to the highest responsible bidder, after calling for bid purchasers as herein set forth for bid sellers, and such city or town may trade in supplies or old equipment on new supplies or equipment at such bid price as will result in the lowest net price.

Also a city or town may, without bid, when there are sufficient funds in the budget for supplies or equipment, purchase such supplies or equipment from government agencies available to cities or towns when the same can be purchased by such city or town at a substantial saving to such city or town.

All necessary contracts for professional, technical, engineering and legal services are excluded from the provisions of this act.

History: En. Sec. 1, Ch. 48, L. 1907; re-en. Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R. C. M. 1921; amd. Sec. 1, Ch. 22, L. 1927; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963.

Amendments

The 1959 amendment, in the first paragraph, substituted the phrase "once each week for two consecutive weeks and the second publication shall be made not less than five (5) days nor more than twelve

(12) days" for the phrase "twice, the first publication to be made not more than twenty-two (22) days nor less than fifteen (15) days before the consideration of bids and the second publication shall be made not less than five (5) days nor more than ten (10) days."

The 1963 amendment inserted "or for the construction of any building" near the beginning of the first paragraph.

Repealing Clause

Section 2 of Ch. 220, Laws 1959 repealed all acts and parts of acts in conflict therewith.

CHAPTER 13—PRESENTATION AND PAYMENT OF CLAIMS— CITY WARRANTS

Section 11-1310. Investment of city or town moneys in city or town warrants and approved securities.

11-1305. (5080) Defective highways and public works—notice, etc.

Notice to City of Defective Condition

In an action by a pedestrian against a municipality for injuries sustained in a fall on a sidewalk, a telephone conversation by the owner of a business adjacent to the site of the fall, to the city engineer's office to the effect that he reported a defect in the walk to the person who answered the phone, was admissible and the absence of proof that the city clerk made a record of the report did not deny the right of the pedestrian, having carried the burden of proof, to recover damages. *Ratliff v. City of Great Falls*, 132 M 89, 314 P 2d 880.

Notice to the city may be proved "by any method through competent evidence." *Ratliff v. City of Great Falls*, 132 M 89, 314 P 2d 880, 883.

In an action for personal injuries resulting from fall on defective sidewalk, notice to a former street employee of the

city, who had no authority to cause repairs to be made and was not chargeable with responsibility for ascertaining and reporting to those having authority to repair, was not notice to the city. *Morris v. City of Deer Lodge*, — M —, 369 P 2d 30, 32.

Operation and Effect

A cause of action for damage to property allegedly caused by the insufficiency of a storm sewer to handle water from a heavy rain was barred by the failure to give notice to the city within 60 days. *Thompson v. City of Shelby*, 136 M 562, 323 P 2d 33.

Purpose

The purpose of this section is to give knowledge of the injury to the city authorities so that the expense of litigation may be avoided, not alone that the city

may have an opportunity to investigate, and it is not sufficient that city officers had notice of the defect. *Thompson v. City of Shelby*, 136 M 562, 323 P 2d 33, 34.

References

Cited in *Big Head v. United States*, 166 F Supp 510, 515.

11-1310. Investment of city or town moneys in city or town warrants and approved securities. (1) Except as provided in subsection (2) of this section, whenever the city or town has under its control any moneys, for which there is no immediate demand, in any fund which, in the judgment of the city or town council, it would be advantageous to invest in city or town warrants, the city or town council is authorized in their discretion to direct the city or town treasurer to purchase legally issued city or town general obligation warrants of the same city or town, thereafter issued against funds in which there is not sufficient money to pay such city or town warrants at the time of issuance, and in case of such purchase, the city or town council shall designate the fund or funds, to be so invested, and shall fix the amount thereof, and shall also designate the city or town warrant or warrants which are to be purchased by such funds. The city or town clerk shall thereupon cause to be attached to, or stamped, written or printed upon the warrants so ordered to be purchased a notice to the effect that the city or town will exercise its preference right to purchase such warrant. The city or town treasurer shall thereafter, when such city or town warrant is presented to him, purchase the same out of the proper fund as designated by the city or town council, and the warrant so purchased shall be registered as other city or town warrants, and bear interest as provided by law. When the designated amounts have been invested the city or town treasurer shall notify the city or town clerk.

(2) Whenever the city or town has under its control any moneys realized from the sale of bonds, for which there is no immediate demand, which in the judgment of the city or town council it would be advantageous to invest in any time or savings deposits, United States certificates of indebtedness, United States treasury notes or United States treasury bonds having a maturity date of one (1) year or less, the city or town council is authorized in their discretion to direct the city or town treasurer to make such investments. Interest earned from such investments shall be credited to the bond sinking fund of the city or town.

History: En. Sec. 1, Ch. 31, L. 1961; amd. Sec. 1, Ch. 10, L. 1963.

Title of Act

An act to provide that a city or town may invest moneys from funds for which there is no immediate demand, in the purchase of outstanding city or town warrants, providing the warrants that may be so purchased, and the manner in which such warrants shall be purchased, and repealing all acts or parts of acts in conflict herewith.

Amendment

The 1963 amendment designated the original section as subsection (1); inserted the words "Except as provided in subsection (2) of this section" at the beginning of such subsection (1); and added subsection (2).

Repealing Clauses

Section 2 of Ch. 31, Laws 1961 and Sec. 2 of Ch. 10, Laws 1963 repealed all acts and parts of acts in conflict therewith.

CHAPTER 14—BUDGET SYSTEM FOR CITIES AND TOWNS

11-1409. (5083.8) Emergency expenditures—Notice and hearing, etc.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see Table A, M. R. Civ. P. (sec. 93-2711-7).

CHAPTER 18—POLICE DEPARTMENT, METROPOLITAN POLICE LAW

Section 11-1804.1. Third class cities—appointment of commission upon request of policemen—procedure for discharge of policemen.

11-1806. Presentation and trial of charges against policemen.

11-1814. Qualifications of policemen.

11-1823. Fund for payment of officers on reserve lists—tax levy.

11-1801. (5095) Police department.

Appointment of Policemen in Third Class City

Where a city had not elected to come under the provisions of the metropolitan police law, it was not bound by any of the provisions thereof and was not prohibited from appointing a policeman who had not been a resident for six months. *McBroom v. City of Polson*, 137 M 33, 349 P 2d 1023.

Liability of City for Tortious Act of City Policeman

A city is not liable for tortious acts of a city policeman committed while acting within the course and scope of his employment in enforcing the laws and ordi-

nances of a city. *Kingfisher v. City of Forsyth*, 132 M 39, 314 P 2d 876, 878.

Operation and Effect

A municipality has the duty to maintain an adequate police force and, it follows, the duty to preserve order, and in performing that duty the municipality is performing a governmental function. *Kingfisher v. City of Forsyth*, 132 M 39, 314 P 2d 876, 879.

As to cities of the first and second classes, the metropolitan police law is mandatory, but, as to other cities and towns, it is permissive only. *McBroom v. City of Polson*, 137 M 33, 349 P 2d 1023, 1024.

11-1804. (5098) Police commission required in first and second, etc.

References

Cited or applied in *McBroom v. City of Polson*, 137 M 33, 349 P 2d 1023, 1024.

11-1804.1. Third class cities—appointment of commission upon request of policemen—procedure for discharge of policemen. It is hereby made the duty of the mayor of any city of the third class which does not have a police commission, upon the written request of any policeman who has been employed by said city as such for a period of ten years or more, to appoint a police commission in accordance with the provisions of section 11-1804, Revised Codes of Montana, 1947, which commission shall then proceed under the provisions of section 11-1806, Revised Codes of Montana, 1947, before such policeman can be discharged or terminated from his employment as a policeman.

History: En. Sec. 1, Ch. 199, L. 1959.

Title of Act

An act to make it the duty of the mayor of any city of the third class which does not have the police commission, upon the written request of a policeman employed by the city as such for ten years or more

to appoint a police commission in accordance with section 11-1804, Revised Codes of Montana, 1947; providing for procedure as set forth in section 11-1806, Revised Codes of Montana, 1947; providing for an effective date; and repealing all acts and parts of acts in conflict herewith.

Repealing Clause

Section 2 of Ch. 199, Laws 1959 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 199, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 10, 1959.

11-1806. (5100) Presentation and trial of charges against policemen.

(1) to (9). * * * [Subdivisions (1) to (9), same as parent volume.]

(10) The mayor or chief of police, subject to the approval of the mayor, shall have the power in all cases, to suspend a policeman, or any officer, for a period of not exceeding ten (10) days in any one (1) month, such suspension to be with or without pay as the order of suspension may determine. Any officer suspended, with or without pay, is entitled to appeal such suspension to the police commission and it shall be the duty of the commission to hear, try and decide all charges brought by any person or persons against any member or officer of the department. The mayor of any city shall have the power and authority at any time when he deems it expedient to employ not to exceed two (2) persons at one time for a period not to exceed thirty (30) days to do police duty who are not members of the police department.

(11). * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 136, L. 1907; re-en. Sec. 3309, Rev. C. 1907; re-en. R. C. M. 1921; amd. Sec. 4, Ch. 119, L. 1923; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959.

the commission to hear, try and decide all charges brought by any person or persons against any member or officer of the department" following the words "in any one (1) month," for the words "without any hearing or trial, such suspension to be with or without pay as the order of suspension may determine."

Amendment

The 1959 amendment in subd. (10) substituted the words "such suspension to be with or without pay as the order of suspension may determine. Any officer suspended, with or without pay, is entitled to appeal such suspension to the police commission and it shall be the duty of

Repealing Clause

Section 2 of Ch. 28, Laws 1959, repealed all acts and parts of acts in conflict therewith.

11-1814. (5106) Qualifications of policemen. The members of a police department of any city, at the time of their appointment under this act, shall not be less than twenty-one years of age nor more than forty years of age, provided, however, that any city council shall have the power by ordinances duly passed and approved to retire any police officer on half pay, who shall have arrived at the age of sixty-five years, or who shall have served continuously as a police officer for a period of not less than twenty-five years, or who shall have become incapacitated to perform the duties of his office by reason of injury or accident sustained while actually engaged in the performance of his duties as an officer.

In every case a police officer must be a citizen of the United States, must have resided in the state of Montana at least two years, and have been a resident of the city or town in which he is appointed at least six (6) months prior to such appointment, such qualifications also to apply to every officer on the eligible list, at the time he shall be transferred to the active list.

Every police officer must be able to speak and write understandingly the English language.

History: En. Sec. 12, Ch. 136, L. 1907; re-en. Sec. 3315, Rev. C. 1907; re-en. Sec. 5106, R. C. M. 1921; amd. Sec. 6, Ch. 119, L. 1923; amd. Sec. 1, Ch. 29, L. 1959.

Amendment

The 1959 amendment in the first paragraph deleted the words "but this restriction shall not apply to any member of any present police department," which appeared after the words "forty years of age," and in the second paragraph substituted the words "must have resided in the state of Montana at least two years, and have been a resident of the city or town in which he is appointed at least six (6) months" for the words "and have

been a resident of the city or town in which he is appointed at least two years."

Repealing Clause

Section 2 of Ch. 29, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Appointment of Policemen in Third Class City

Where a city had not elected to come under the provisions of the metropolitan police law, it was not bound by any of the provisions thereof and was not prohibited from appointing a policeman who had not been a resident for six months. *McBroom v. City of Polson*, 137 M 33, 349 P 2d 1023.

11-1823. (5108.7) Fund for payment of officers on reserve lists—tax levy. For the purpose of paying the salaries of policemen who have been placed upon the reserve list of the cities of the first and second class, the city or town council, or commissioners, shall in the manner provided for by law, and at the time of the levy of the annual tax, levy such special tax of not to exceed one (1) mill on the dollar upon the assessed valuation of all taxable property within the limits of said city or town, which said tax shall be collected as other taxes and when so collected, shall be paid into the fund created for the payment of such salaries of police officers upon the reserve list.

However, in case the demand against such fund shall be heavier than said levy can provide, then and in such case such additional levy of not to exceed two (2) mills may be made until such returns from the first mill levy be sufficient to meet the demand.

History: En. Sec. 7, Ch. 100, L. 1927; amd. Sec. 7, Ch. 120, L. 1929; amd. Sec. 2, Ch. 78, L. 1937; amd. Sec. 1, Ch. 78, L. 1949; amd. Sec. 1, Ch. 8, L. 1959.

Repealing Clause

Section 2 of Ch. 8, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 Amendment, in the second paragraph raised the additional levy authorized from one mill to two mills.

11-1824. (5108.8) Cities under second class may come within, etc.

References

Cited or applied in *McBroom v. City of Polson*, 137 M 33, 349 P 2d 1023, 1024.

11-1832. (5108.16) Minimum wage of police in first and second class cities.

Annual Increase

Although the wages provided for by the 1957 amendment are payable only after July 1, 1957, this does not mean that the legislature did not intend to consider service prior to that date in computing what the wages shall be. *Hill v. Billings*, 134 M 282, 328 P 2d 1112, 1115.

In enacting Laws of 1957, chapter 28, amending this section, the legislature intended to recognize the status of police

officers according to the length of service in the past and to reward the more experienced by paying them a higher wage scale. The legislature drew no distinction between years of service performed before July 1, 1957, and those performed after that date. *Hill v. Billings*, 134 M 282, 328 P 2d 1112, 1116.

Under this section as amended by Laws of 1957, chapter 28, added wages must be added to the actual current salary and

not to the minimum of \$350 a month. *Hill v. Billings*, 134 M 282, 328 P 2d 1112, 1115.

Where a policeman's salary for one fiscal year was a stated amount which was calculated to include the longevity to which he was entitled, his "actual current salary" was the amount received

other than for longevity, and the amount to which he is entitled for the next year is computed by adding his total longevity to the "actual current salary" rather than to the stated amount. *State ex rel. Raw v. City of Helena*, 139 M 343, 363 P 2d 720, 722.

11-1833. (5108.17) Application of act.

References

Cited or applied in *McBroom v. City of Polson*, 137 M 33, 349 P 2d 1023, 1025.

CHAPTER 19—FIRE DEPARTMENT—FIREMEN'S DISABILITY AND PENSION FUND

- Section 11-1912. Tax levy for fund.
 11-1914. Duties of trustees—investment of surplus funds.
 11-1918. Reports of insurers.
 11-1919. State auditor to pay fire department relief association premium tax collected from certain insurers.
 11-1920. Estimate of payments.
 11-1921. State treasurer to pay warrants.
 11-1925. Pensions to retired firemen.
 11-1926. Disability pension.
 11-1927. Pensions to widows and orphans.

11-1912. (5119) Tax levy for fund. For the purpose of maintaining said disability and pension funds of such fire department relief association, in an amount equal to one per centum (1%) of the taxable valuation of all taxable property within the limits of any city, town or municipality, the city or town council or the commission or such other proper authority of any municipality, as is now or may hereafter be established, under special or local laws passed by the legislative assembly and adopted by the electors within such city, town or municipality, entitled to vote thereon, at all times when the said relief association fund is in a total amount of less than one per centum (1%) of the taxable valuation of all taxable property within the limits of the city, town or municipality, shall, annually, in the manner provided by law, at the time of the levy of the annual tax, levy a special tax as herein below set forth, which said special tax shall be collected as other taxes are collected and when so collected shall be paid into the disability and pension fund of the fire department relief association of said city, town or municipality:

1. Whenever the total amount of a fire department relief association's fund is less than one per centum (1%) of the taxable valuation of all taxable property within the limits of the city, town or municipality, the special tax levy shall be two (2) mills on each dollar of taxable valuation of all property assessed for taxes within the limits of the said city, town or municipality; provided, however, if the assessment of a two (2) mill tax levy in any one year will create a revenue as will cause said fire department relief association's disability and pension fund to exceed one per centum (1%) of the taxable valuation of all taxable property in said city, town or municipality, then, in that event, and not otherwise, the mill tax levy shall be such fractional part of two (2) mills as will produce a

sufficient amount of revenue as will bring the total amount of the said fire department relief association's disability and pension fund to an amount equal to one per centum (1%) of the taxable valuation of all taxable property in said city, town or municipality.

2. In cities of the third class, when the fire department relief association's disability and pension fund contains an amount of less than two per centum (2%) of all taxable property within the city limits of the city, town or municipality, the city council may levy an annual special tax not to exceed two (2) mills on the dollar of all taxable valuation of all taxable property assessed within the said city, town or municipality.

History: En. Sec. 3, Ch. 71, L. 1907; re-en. Sec. 3336, Rev. C. 1907; re-en. Sec. 5119, R. C. M. 1921; amd. Sec. 3, Ch. 58, L. 1927; amd. Sec. 1, Ch. 43, L. 1931; amd. Sec. 2, Ch. 43, L. 1939; amd. Sec. 1, Ch. 159, L. 1945; amd. Sec. 1, Ch. 183, L. 1949; amd. Sec. 1, Ch. 107, L. 1959.

Amendment

The 1959 amendment in subd. 1 deleted the words "greater than one-half of one per centum ($\frac{1}{2}$ of 1%) and" which ap-

peared after the words "association's fund is"; substituted "two (2) mills" for "one (1) mill" each time it appears; deleted former subd. 2, for text of which see parent volume, and renumbered old subd. 3 as subd. 2.

Repealing Clause

Section 2 of Ch. 107, Laws 1959 repealed all acts or parts of acts in conflict therewith.

11-1914. Duties of trustees—investment of surplus funds. The board of trustees of said fire department relief association shall audit the account of the association at least every six (6) months and shall report the condition thereof at the next regular meeting of said association. The general management of the association shall be vested in the board of trustees. When so directed by a majority vote of the members of the association, the board of trustees shall have the power to invest the surplus funds of the association or any part thereof, in any time or saving deposits, in bonds or other securities of the United States government, in general obligation bonds or warrants of any state, county or city as are recommended by the state auditor and approved by the state examiner. At the time of purchase such investments must be stamped in boldface type, substantially as follows: "Property of the _____ Fire Department Relief Association, and negotiable only upon the order of the board of trustees of such association."

History: En. Sec. 5, Ch. 71, L. 1907; re-en. Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R. C. M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; amd. Sec. 1, Ch. 9, L. 1963.

Amendment

The 1963 amendment inserted "in any time or saving deposits" in the third sentence.

11-1918. (5126) Reports of insurers. The commissioner of insurance shall furnish to each insurer authorized to effect insurance against risks enumerated in subsection 2 of section 11-1919 for its annual statement, a list of all such incorporated cities or towns, and each insurer shall report therein the amount of the fire portion of the direct premiums, after deducting cancellations and return premiums, received by it during the preceding year in each incorporated city or town. Before July 1 following the said October 31, mentioned in preceding sections, the commissioner of insurance shall certify to the state auditor the name of each city or town

which has an organized fire department and fire department relief association which has complied with provisions of section 11-1910, which has been so reported to him and the amount of the fire portion of the direct premiums after deducting cancellations and return premiums, received in each such city or town in such year by each insurer authorized to effect insurance on risks enumerated in subsection 2 of section 11-1919.

History: En. Sec. 2, Ch. 129, L. 1911; 1 of section 40-1409" each time it appeared.
re-en. Sec. 5126, R. C. M. 1921; amd. Sec. 8, Ch. 58, L. 1927; amd. Sec. 1, Ch. 126, L. 1947; amd. Sec. 1, Ch. 22, L. 1955; amd. Sec. 1, Ch. 184, L. 1959.

Amendment

The 1959 amendment substituted the word "insurer" for the words "insurance company" each time they appear and substituted the reference "subsection 2 of section 11-1919" for the reference "paragraph

Repealing Clause

Section 2 of Ch. 184, Laws 1959, repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 184, Laws 1959 read "This act shall be in full force and effect from and after January 1, 1960."

11-1919. (5127) State auditor to pay fire department relief association premium tax collected from certain insurers. 1. At the end of the fiscal year, the state auditor shall issue and deliver to the treasurer of every city or town, for the use and benefit of the fire department relief association legally existing in every such city or town entitled by law to receive the same, his warrant for an amount equal to the taxes upon the fire portion of the direct premiums after deducting cancellations and return premiums, collected by the state auditor, ex officio insurance commissioner, from insurers authorized to effect insurance on risks enumerated in subsection 2 of this section, as said cities or towns are each severally entitled to, computed as follows:

(a) Each and every fire department relief association legally organized and existing in any city or town and entitled by law to receive the same shall receive, as its portion of the total taxes on premiums collected from insurers authorized to effect insurance on risks enumerated in subsection 2 of this section, the fire portion of the direct premiums, after deducting cancellations and return premiums, assessed and collected by insurers authorized to effect insurance on risks enumerated in subsection 2 of this section in the said city or town.

(b) The legally organized and existing fire department relief associations in all cities or towns where the taxes on premiums collected and distributed pursuant to subdivision (a) above is insufficient to make an amount equal to one hundred dollars (\$100.00) shall receive such additional amount from the total taxes on premiums collected from insurers authorized to effect insurance against risks enumerated in subsection 2 of this section as may be necessary to make the total amount received by said fire department relief association equal to the sum of one hundred dollars (\$100.00).

2. The risks referred to in subsection 1 above, are enumerated as follows: Insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty, and all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land or water or air; insurance against loss or damage to motor

vehicles resulting from accident, collision, or marine and inland navigation and transportation perils; insurance of growing crops against loss or damage resulting from hail or the elements; insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps or other apparatus; and insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles whether by accident or collision or by explosion of any engine or tank or boiler or pipe or tire of any vehicle, and also including insurance against theft of the whole or any part of any vehicle.

History: En. Sec. 3, Ch. 129, L. 1911; amd. Sec. 1, Ch. 49, L. 1915, re-en. Sec. 5127, R. C. M. 1921; amd. Sec. 9, Ch. 58, L. 1927; amd. Sec. 1, Ch. 127, L. 1933; amd. Sec. 1, Ch. 15, L. 1935; amd. Sec. 1, Ch. 127, L. 1947; amd. Sec. 1, Ch. 183, L. 1959; amd. Sec. 1, Ch. 54, L. 1963.

Amendments

The 1959 amendment made numerous changes in this section and added subsection 2. For section prior to amendment see parent volume.

The 1963 amendment substituted "the fire portion of the direct premiums after deducting cancellations and return pre-

miums" for "premiums" in the preliminary paragraph of subsection 1, and for "all of the taxes on premiums" in subd. 1 (a); and deleted the words "on all premiums collected" which followed "assessed and collected" in the latter part of subd. 1 (a).

Repealing Clause

Section 2 of Ch. 183, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 183, Laws 1959 read "This act shall be in full force and effect from and after January 1, 1960."

11-1920. (5127.1) Estimate of payments. The state auditor shall estimate the portion of premium taxes needed to make the payments required by this act and shall pay an amount equal to the estimate into the state treasury, to the credit of the earmarked revenue fund. Any balances remaining after such payments have been ordered shall be transferred to the general fund.

History: En. Sec. 2, Ch. 15, L. 1935; amd. Sec. 69, Ch. 147, L. 1963.

Amendment

The 1963 amendment completely rewrote this section. For previous text, see parent volume.

11-1921. (5128) State treasurer to pay warrants. The state treasurer is hereby authorized and directed, upon the presentation to him of a warrant drawn pursuant to this act, to pay to the treasurer of any such city or town, out of moneys in the earmarked revenue fund dedicated for such purpose, the amount of such warrant specified, which amount shall be paid by said city treasurer to said fire department relief association.

History: En. Sec. 4, Ch. 129, L. 1911; re-en. Sec. 5128, R. C. M. 1921; amd. Sec. 10, Ch. 58, L. 1927; amd. Sec. 70, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "a warrant drawn pursuant to this act" for

"said warrant of the state auditor" and "moneys in the earmarked revenue fund dedicated for such purpose" for "the fund known as the disability and pension fund of the fire department relief association as by law designated."

11-1925. (5132) Pensions to retired firemen. Each and every fire department relief association organized and existing under the laws of this state shall pay to each of its members who elect to retire from active service after having completed twenty (20) years or more of active duty

and has reached the age of fifty (50) years as a fully paid member of a paid, or partly paid and partly volunteer fire department of the city or town wherein such association has been formed, out of any money in the association's "disability and pension fund," a "service pension" in an amount which shall be equal to one-half ($\frac{1}{2}$) of the sum last received by the member as a monthly compensation for his services as an active member of said fire department. Provided, such association may at any time, by a two-thirds ($\frac{2}{3}$) vote of the members thereof, increase or decrease the said service pension whenever the financial condition of the association's "disability and pension fund" shall warrant such action; provided, that no increase shall be effected as will increase the said "service pension" to an amount in excess of a sum equal to one-half ($\frac{1}{2}$) of the monthly active duty compensation last received by the member; provided, further, that no decrease shall be effected unless the balance in the "disability and pension fund" is less than one-half ($\frac{1}{2}$) of one per cent (1%) of the taxable valuation of all taxable property within the limits of the city, town or municipality. However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department. In case of volunteer men the compensation shall in no event exceed the sum of seventy-five dollars (\$75.00) per month.

A member of a pure volunteer fire department who has served twenty (20) years or more as an active member of such a fire department, without qualifying as to any provisions pertaining to an attained age, shall be entitled to the benefits provided for by this act.

History: En. Sec. 8, Ch. 129, L. 1911; amd. Sec. 1, Ch. 66, L. 1919; re-en. Sec. 5132, R. C. M. 1921; amd. Sec. 14, Ch. 58, L. 1927; amd. Sec. 1, Ch. 73, L. 1939; amd. Sec. 1, Ch. 98, L. 1945; amd. Sec. 1, Ch. 194, L. 1949; amd. Sec. 1, Ch. 56, L. 1963.

Amendment

The 1963 amendment inserted the next to last sentence in the first paragraph.

11-1926. (5133) Disability pension. Each and every fire department relief association, organized and existing under the laws of this state, shall pay a "disability pension," out of any moneys in the association's "disability and pension fund," to each and every member of said association who has become injured or disabled by reason of sickness or injury contracted or received in line of duty, in an amount which shall be equal to one-half ($\frac{1}{2}$) of the sum last received as a monthly compensation by such injured or disabled member for services rendered the fire department of the city or town wherein such association has been formed. Provided, such association may at any time, by two-thirds ($\frac{2}{3}$) vote of the members thereof, increase or decrease the said "disability pension" whenever the financial condition of the association's "disability and pension fund" shall warrant such action; provided further, that no increase shall be effected as will increase the said "disability pension" to an amount in excess of a sum equal to one-half ($\frac{1}{2}$) of the monthly salary last received

by the member; provided, further, that no decrease shall be effected unless the balance in the "disability and pension fund" is less than one-half ($\frac{1}{2}$) of one per cent (1%) of the taxable valuation of all taxable property within the limits of the city, town, or municipality. However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department. In case of volunteer firemen such disability pension shall in no event exceed the sum of seventy-five (\$75.00) dollars per month.

History: En. Sec. 9, Ch. 129, L. 1911; amd. Sec. 2, Ch. 66, L. 1919; re-en. Sec. 5133, R. C. M. 1921; amd. Sec. 15, Ch. 58, L. 1927; amd. Sec. 2, Ch. 73, L. 1939; amd. Sec. 2, Ch. 98, L. 1945; amd. Sec. 2, Ch. 56, L. 1963.

Amendment

The 1963 amendment deleted from the second sentence a proviso reading, "pro-

vided further that no member of said association shall be entitled to receive said 'disability pension' so long as he may be receiving an allowance or award under the Montana workmen's compensation act"; inserted the next to last sentence; and made a minor change in phraseology.

DECISIONS UNDER FORMER LAW

Workmen's Compensation Proviso Unconstitutional

The provisions of this section clearly impair an obligation of contract and must be declared unconstitutional insofar as they prohibit a fireman or his widow or orphah from receiving payments from the

disability and pension fund if they are also receiving payments under the Workmen's Compensation Act (section 92-101 et seq.). State ex rel. Evans v. Fire Department Relief Assn., 138 M 172, 355 P 2d 670, 672.

11-1927. (5134) Pensions to widows and orphans. Each and every fire department relief association, organized and existing under the laws of this state, shall pay to the widow or orphans of a deceased member of said association, who, on the date of his decease, was an active member of the fire department in the city or town wherein such association has been formed, or had elected to retire from active service of said fire department and receive a "service pension" as provided for by section 11-1925, or prior to his decease had suffered a sickness or injury in line of duty, and was receiving or was qualified to receive a "disability pension," as provided by section 11-1926, out of any money in the relief association's "disability and pension fund," a monthly pension in an amount which shall be equal to one-half ($\frac{1}{2}$) of the monthly compensation last received by such deceased member for his services as an active member of the fire department in the city or town wherein such association has been formed. Provided, such association may at any time, by a two-thirds ($\frac{2}{3}$) vote of the members thereof, increase or decrease the said pension whenever the financial condition of the association's "disability and pension fund" shall warrant such action; provided, that no increase shall be effected as will increase the said pension in an amount in excess of a sum equal to one-half ($\frac{1}{2}$) of the monthly compensation last received by the deceased member; provided, further, that no de-

crease shall be effected unless the balance in the "disability and pension fund" is less than one-half ($\frac{1}{2}$) of one per cent (1%) of the taxable valuation of all taxable property within the limits of the city, town, or municipality. However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department. Provided, that said pension shall be paid to the within named widow only so long as she remains unmarried, and further provided, that a widow of a deceased fireman shall not be entitled to the pension, provided for by this act, in those cases where the marriage was consummated after the fireman had elected to retire from active service and received a "service pension" as provided for by section 11-1925; or in those cases where the marriage was consummated after the fireman had qualified and was receiving a "disability pension" as provided for by section 11-1926. Provided further, that the pension herein provided for shall not be paid to the orphans of deceased firemen after they have attained the age of eighteen (18) years. In case of volunteer firemen such pension shall in no event exceed the sum of seventy-five (\$75.00) dollars per month.

History: En. Sec. 10, Ch. 129, L. 1911; re-en. Sec. 5134, R. C. M. 1921; amd. Sec. 16, Ch. 58, L. 1927; amd. Sec. 3, Ch. 73, L. 1939; amd. Sec. 3, Ch. 98, L. 1945; amd. Sec. 3, Ch. 56, L. 1963.

Amendment

The 1963 amendment inserted the third sentence (establishing a pension increase for elective additional service), and made a minor change in phraseology.

Separability Clause

Section 4 of Ch. 56, Laws 1963 read "If any clause, sentence, section, paragraph, or part of this act shall for any reason, be adjudged by any court of competent jurisdiction to be invalid, or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid and inoperative."

CHAPTER 20—FIRE PROTECTION IN UNINCORPORATED TOWNS—FIRE WARDENS, COMPANIES AND DISTRICTS

- Section 11-2008. Fire protection—creation of fire districts—contracts with cities, towns and private service—dissolution and change of boundaries.
- 11-2010. Trustees of fire districts—appointment—powers.
 - 11-2025. Payment of claim.
 - 11-2026. Administration of act.
 - 11-2028. Earnings to be part of moneys.
 - 11-2030. Fire insurance premium tax to be paid into fund.

11-2008. (5148) Fire protection—creation of fire districts—contracts with cities, towns and private service—dissolution and change of boundaries. (a) The board of county commissioners is authorized to establish fire districts in any unincorporated territory, town or village upon presentation of a petition in writing signed by the owners of fifty per cent (50%) or more of the area of the privately owned lands included within the proposed district who constitute a majority of the taxpayers who are freeholders of such area, and whose names appear upon the last completed assessment roll; the board shall within ten (10) days

after the receipt of such petition; give notice of the hearing thereof at least ten (10) days prior thereto by causing notices of the time and place of such hearing to be posted in at least three (3) of the most public places within the area proposed to be established as a fire district, and published at least once not less than ten (10) or more than twenty (20) days prior to the time of said hearing in a newspaper regularly published in the county in which such proposed district is situated. The board shall proceed to hear the said petition at the time set therefor, or at any time within five (5) days thereafter to which the same shall have been postponed or continued with due notice, and may grant the same unless it shall be established thereat that the petition bears insufficient signatures as above required, or, if originally sufficient, that by reason of written withdrawals thereof it has become insufficient. The board shall render its decision within thirty (30) days after said hearing. At the time of the annual levy of taxes the board of county commissioners may levy a special tax upon all property within such districts for the purpose of buying or maintaining fire protection facilities and apparatus for such districts, or for the purpose of paying to a city, town or private fire service the consideration provided for in any contract with the council of such city, town or private fire service for the purpose of furnishing fire protection service to property within such district, and such tax must be collected as are other taxes. That the relationship between fire district and the city, town or private fire service shall be that of an independent contractor.

(b) Any fire district organized under this act may be dissolved by the board of county commissioners upon presentation of a petition therefor signed by the owners of fifty per cent (50%) or more of the area of the privately owned lands included within such fire district and who constitute a majority of the taxpayers who are freeholders of such area, and whose names appear upon the last completed assessment roll. The procedure and requirements outlined in subsection (a) above shall apply to such requests for dissolution of fire districts.

(c) Change of boundaries—division. Fire districts may be divided in the following manner: Whenever a petition in writing shall be made to the county commissioners, signed by the owners of twenty per cent (20%), or more, of the privately owned lands of an area proposed to be detracted from the original district, and who constitute twenty per cent (20%), or more, of the taxpayers who are freeholders within such proposed detracted area, whose names appear upon the last completed assessment roll, the county commissioners shall, within ten (10) days from the receipt of such petition give notice of the hearing of said petition by causing to be posted, a notice thereof at least ten (10) days prior to the time appointed by them for the consideration of said petition, in at least three (3) of the most public places within the proposed detracted area, and also in at least three (3) of the most public places within the remaining area. The petition for detraction shall describe the boundaries of the proposed detracted area, and also the boundaries of the remaining area. The county commissioners shall, on the day fixed for hearing such petition (or on any legally postponed day), proceed to hear said petition; and

said petition shall be granted, and the original district shall thereupon be divided into separate districts, unless at the time of the hearing on such petition protests shall be presented by the owners of fifty per cent (50%), or more, of the area of the privately owned lands included within the entire original district, and who constitute a majority of the taxpayers who are freeholders of the entire original district, and whose names appear upon the last completed assessment roll. If such required amount of protests are presented, the petition for division shall be disallowed. Upon the division of districts, moneys on hand shall be apportioned between the divided areas according to their respective taxable valuations; all other assets of the original district shall become the property of the remaining area, but a reasonable value shall be placed upon such "other assets" and the remaining area shall become indebted to the detracted area for its proportionate share thereof, based upon taxable valuations. Provided, however, that any detracted area shall remain liable for any existing warrant and bonded indebtedness of the original district.

(d) Change of boundaries—annexation. Adjacent territory that is not already a part of a fire district may be annexed in the following manner: A petition in writing by the owners of fifty per cent (50%), or more of the area of privately owned lands of the adjacent area proposed to be annexed, and who constitute a majority of the taxpaying freeholders within such proposed area to be annexed, whose names appear upon the last completed assessment roll, shall be presented to the board of county commissioners. The commissioners shall hold a hearing on such petition, in accordance with the procedure outlined in subsection (c) above, and shall allow the annexation of such proposed adjacent territory, unless protests are presented at the hearing by the owners of fifty per cent (50%), or more, of the area of the privately owned lands included within the original district, and who constitute a majority of the taxpaying freeholders within the original district. Such annexed territory shall become liable for any outstanding warrant and bonded indebtedness of the original district.

Adjacent territory that is already a part of a fire district may withdraw from such fire district and become annexed to another fire district in the following manner: A petition in writing by the owners of fifty per cent (50%), or more, of the privately owned lands of an area, which is part of any organized fire district, and who constitute a majority of the taxpaying freeholders within such area, according to the last completed assessment roll, shall be presented to the county commissioners asking that such area be transferred to, and included in, any other organized fire district to which said area is adjacent. Said petition must set forth the change of boundaries to be affected by such proposed transfer of area. The commissioners shall hold a hearing on the petition in accordance with the procedure outlined in subsection (c), above; and the withdrawal and annexation shall be allowed unless protests are presented at the hearing by the owners of fifty per cent (50%), or more, of the area of the privately owned lands included within either district affected, and who constitute a majority of the taxpaying freeholders of either district, according to the last completed assessment roll, and provided, that such

withdrawals and annexation shall be allowed only upon a showing of more advantageous proximity and communications with the fire-fighting facilities of the other district.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1931; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963.

Amendments

The 1959 amendment by Ch. 48 substituted the word "adjacent" for "contiguous" wherever it appears in subd. (d) and the last paragraph and substituted "either district" for "both districts" each time it appears in the last paragraph.

The 1959 amendment by Ch. 77 in subd. (a) substituted the word "or" for "and" which appeared between the words "buying" and "maintaining"; inserted the words "or private fire service" in two places in the next to last sentence of subd. (a); substituted the words "for the purpose of furnishing" for "for the extension of" before the words "fire protection service" in the same sentence and added the last sentence to subd. (a).

The 1963 amendment incorporated both of the 1959 amendments and inserted "of

the privately owned lands" or "of the area of privately owned lands" in one place in each of subds. (a) and (b), in two places in subd. (c), and in two places in each of the paragraphs of subd. (d).

Severability Clause

Section 2 of Ch. 48, Laws 1959 read: "If any provision contained in this act shall for any reason be held invalid, such decision shall not invalidate the remaining portions of this act."

Repealing Clause

Section 3 of Ch. 48, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Constitutionality

This section, before the 1957 amendment, was unconstitutional as being in direct conflict with the due process of law clause in section 27, article III, Montana Constitution and the first clause of the fourteenth amendment to the Constitution of the United States of America. *Great Northern Railway Co. v. Roosevelt County*, 134 M 355, 332 P 2d 501, 502, 505, 506, distinguished in 138 M 69, 73, 354 P 2d 1056, 1058.

11-2009. (5148.1) Unconstitutional.

Unconstitutional

This section (Sec. 1, Ch. 148, L. 1925), authorizing establishment of fire limits within unincorporated towns, was held unconstitutional in *Great Northern Railway Co. v. Roosevelt County*, 134 M 355, 332 P 2d 501.

This section (Sec. 1, Ch. 148, L. 1925) was a denial of due process in conflict with

section 27, article III, Montana Constitution and the first clause of the fourteenth amendment to the Constitution of the United States of America. *Great Northern Railway Co. v. Roosevelt County*, 134 M 355, 332 P 2d 501, 502, 505, 506, distinguished in 138 M 69, 73, 354 P 2d 1056, 1058.

11-2010. (5149) Trustees of fire districts — appointment — powers.

(a) Whenever the board of county commissioners shall have established a fire district in any unincorporated territory, town or village, said commissioners may contract with a city, town or private fire company to furnish fire protection for property within said district, or shall appoint five qualified trustees to govern and manage the affairs of the fire district, who shall hold office until their successors are elected and qualified, as hereinafter provided. Qualifications of electors and trustees, terms of office, vacancies, manner and date of elections, shall, as far as possible, be the same as provided in the school election laws for school districts of the second class; except, that only electors who are taxpayers affected by the special fire district levies may vote at such elections, and be qualified to serve as trustees; and except, also, there need be no special registration of electors.

(b) Power of trustee. The trustees shall organize by choosing a chairman, and appointing one member to act as secretary. They shall prepare and adopt suitable by-laws; appoint and form fire companies that shall have the same duties, exemptions, and privileges as other fire companies. The trustees shall have the authority to provide adequate and standard fire-fighting apparatus, equipment, housing and facilities for the protection of the district; and shall prepare annual budgets and request special levies therefor. The budget laws relating to county budgets, shall, as far as applicable, apply to fire districts.

(c) The trustees of such fire district may contract with the council of any city or town, or with the trustees of any other fire district established in any unincorporated territory, town or village, lying within five (5) miles of the farthest limits of the district, whether such city or town or other fire district shall lie within the same county or another county, for the extension of fire protection service by such city or town, or by such other fire district, to property included within the district, and may agree to pay a reasonable consideration therefor, provided, that the owners of ten per cent (10%) of the taxable value of the property in any fire district may elect to make a contract with the city fire department for fire protection, or to be included in the fire district protection facilities. Likewise, the trustees may contract to permit the fire district equipment and facilities to be used by or for such cities or towns lying within the district, or by such cities, towns, or other fire districts lying within five (5) miles of the farthest limits of the district.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1925; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959.

Compiler's Note

This section was amended twice by the 1959 legislature. Once by Ch. 77, approved March 2, 1959 and once by Ch. 118, approved March 4, 1959. Neither act mentioned the amendment by the other act but as they amended the section in different respects they do not seem in conflict with each other. Hence, the compiler has made a composite section incorporating the changes made by each amendment.

Amendments

The 1959 amendment by Ch. 77 inserted the words "may contract with a city, town or private fire company to furnish fire protection for property within said district, or" in subd. (a).

The 1959 amendment by Ch. 118 in subd. (c) inserted the words "or with the trustees of any other fire district established in any unincorporated territory, town or village"; inserted the words "whether such city or town or other fire district shall lie within the same county or another county"; inserted the words "or by such other fire district" and added the words "or by such cities, towns, or other fire districts lying within five (5) miles of the farthest limits of the district."

Repealing Clauses

Section 3 of Ch. 77, Laws 1959 and Sec. 2 of Ch. 118, Laws 1959 repealed all acts and parts of acts in conflict therewith.

11-2021. (5158.2) Repealed.

Repeal

This section (Sec. 2, Ch. 65, L. 1935), creating the Volunteer Firemen's Com-

pensation Fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

11-2025. (5158.6) Payment of claim. Upon the receipt of a claim by the industrial accident board, if the same is found to be in compliance with the provisions of section 11-2024, the board must order the

allowance thereof, and pay the same to the order of the attending physician or surgeon, attending nurse, and hospital.

History: En. Sec. 6, Ch. 65, L. 1935;
amd. Sec. 192, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words "by warrants drawn upon the volunteer firemen's fund" after the words "pay the same."

11-2026. (5158.7) Administration of act. The industrial accident board of the state of Montana shall administer this act, and all payments made hereunder shall be made by warrants drawn by the board.

History: En. Sec. 7, Ch. 65, L. 1935;
amd. Sec. 193, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words "from the volunteer firemen's compensation fund" after the words "shall be made."

11-2028. (5158.9) Earnings to be part of moneys. All earnings made by moneys earmarked by section 11-2030 by reason of interest paid for the deposit thereof, or otherwise, shall be credited to and become a part of such moneys.

History: En. Sec. 9, Ch. 65, L. 1935;
amd. Sec. 194, Ch. 147, L. 1963.

for "the volunteer firemen's compensation fund"; and substituted "such moneys" for "said fund" at the end of the section.

Amendment

The 1963 amendment substituted "moneys earmarked by section 11-2030"

11-2030. (5158.11) Fire insurance premium tax to be paid into fund. The state auditor and ex-officio commissioner of insurance of the state of Montana shall annually deposit in the earmarked revenue fund, such sum as shall be equivalent to five per cent (5%) of premium taxes collected from insurers authorized to effect insurance against risks enumerated in subsection 2 of section 11-1919, as shall remain after the amounts provided for by section 11-1919 shall have been first deducted. Such moneys shall be used for the payment of claims and administrative costs as provided in section 11-2025 and 11-2026.

History: En. Sec. 11, Ch. 65, L. 1935;
amd. Sec. 1, Ch. 125, L. 1947; amd. Sec. 1, Ch. 164, L. 1959; amd. Sec. 191, Ch. 147, L. 1963.

teer Fireman's Compensation Fund,' herein created"; and added the second sentence.

Amendments

The 1959 amendment substituted the word "insurers" for "insurance companies" and the reference to "subsection 2 of section 11-1919" for a reference to "paragraph 1 of section 40-1409 pursuant to section 40-1302."

The 1963 amendment substituted "the earmarked revenue fund" for "the Volun-

Repealing Clause

Section 2 of Ch. 164, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 164, Laws 1959 read "This act shall be in full force and effect from and after January 1, 1960."

CHAPTER 22—SPECIAL IMPROVEMENT DISTRICTS

- Section 11-2202. Special improvement districts—placing wires underground—cost per lineal foot.
 11-2204. Resolution of intention—notice—materials.
 11-2218. May issue revenue bonds—sinking fund—refunding revenue bonds.
 11-2231. Form of bonds and warrants.

11-2201. (5225) Special improvements—powers of city council.

Street Improvements

A city may create a special improvement district for street improvements where the street is also a part of a state highway and, in such instance, the con-

tracts for the work must be awarded by the state highway commission. *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058, 1062.

11-2202. (5226) Special improvement districts—placing wires underground—cost per lineal foot. (1) Whenever the public interest or convenience may require, the city council is hereby authorized and empowered to create special improvement districts, for building, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water, and order the whole, or any portion or portions, either in length or width, of any one or more of the streets, avenues, alleys, or places or public ways of any such city, graded or regraded to the official grade, planked or replanked, paved or repaved, macadamized or remacadamized, graveled or regraveled, piled or repiled, capped or recapped, surfaced or resurfaced, oiled or reoiled, and to order the construction or reconstruction therein of sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings, including the planting of grassplots and setting out of trees; sewers, ditches, drains, conduits, and channels for sanitary and drainage purposes, or either or both thereof, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances; water-works, water mains, and extensions of water mains; pipes, hydrants, hose connections for irrigating purposes; appliances for fire protection, tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and walls of rock or other material to protect the same from overflow or injury by water; the opening of streets, avenues, and alleys; the planting of trees thereon; and to maintain, preserve and care for any and all of the improvements herein mentioned; and the construction or reconstruction in, over, or through property or rights of way owned by such city, of tunnels, sewers, ditches, drains, conduits, and channels for sanitary and drainage purposes, or either or both thereof, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances; pipes, hose connections for irrigating, hydrants and appliances for fire protection; and breakwaters, levees, retaining walls and bulkheads; walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in any such city from overflow by water; and to order any work to be done which shall be deemed necessary to improve the whole or any portion of such streets, avenues, sidewalks, alleys, or places or public ways, or property, or right of way of such city. The city council is also hereby authorized

to create a district as hereinafter specified, for the purpose of defraying the cost of acquiring private property for the purpose of opening, widening, or extending any street, avenue, or alley within the corporate limits of such city.

(2). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 89, L. 1913; amd. Sec. 1, Ch. 142, L. 1915; amd. Sec. 1, Ch. 175, L. 1919; re-en. Sec. 5226, R. C. M. 1921; amd. Sec. 1, Ch. 32, L. 1961.

"for building, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water."

Amendment

The 1961 amendment near the beginning of subd. (1) after the words "special improvement districts," inserted the words

References

Cited or applied in *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058, 1061.

11-2204. (5227) Resolution of intention—notice—materials.

(1). * * * [Same as parent volume.]

(2) Upon having passed such resolution the council must give notice of the passage of such resolution of intention, which notice must be published for five days in a daily newspaper, or in some one issue of a weekly paper published in the city or town, or in case no newspaper be published in such city, then by posting for five days in three public places in the city or town, and a copy of such notice shall be mailed to every person, firm, or corporation, or the agent of such person, firm, or corporation having real property within the proposed district listed in his name upon the last completed assessment roll for state, county and school district taxes, at his last known address, upon the same day such notice is first published or posted. Such notice must describe the general character of the improvement or the improvements so proposed to be made, and state the estimated cost thereof, and designate the time when and the place where the council will hear and pass upon all protests that may be made against the making of such improvements, or the creation of such district; and said notice shall refer to the resolution on file in the office of the city clerk for the description of the boundaries. The city council may include in one proceeding under one resolution of intention and in one contract any of the different kinds of work mentioned in this act, and any number of streets and rights-of-way, or portions thereof, and it may except therefrom any of said work, already done, upon a street to the official grade.

(3) and (4). * * * [Subdivisions (3) and (4), same as parent volume.]

History: En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R. C. M. 1921; amd. Sec. 1, Ch. 261, L. 1959.

Repealing Clause

Section 2 of Ch. 261, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment in subd. (2) inserted the word "real" before the word "property" and inserted the words "listed in his name upon the last completed assessment roll for state, county and school district taxes."

Construction of Section

The words "approximate estimate" should not be construed liberally. *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 814, 815.

Notice

Until there is service of notice in strict compliance with the statute, no jurisdiction

tion would attach to the municipality. *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058.

Notice of the resolution of intention given by city to landowners was not sufficient where it did not contain an "approximate estimate" of the cost of improvements, the original estimate having been increased by 7½%. *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 816.

The landowner whose property is affected by the special improvement district must be given notice of the intention of the city's intent to create one. The notice must be sufficiently definite to apprise the landowner of the extent, nature and cost of the various improvements proposed. *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 814.

Parties who have either received notice or waived it by appearing to protest may not take advantage of the failure of notice to other parties who have neither protested nor appeared as parties to the suit. *Shaw v. City of Kalispell*, 135 M 284, 340 P 2d 523.

This section does not require the city clerk to mail copies of the required notice to persons who are neither record owners nor personally known owners of an interest in property in the district, since they have been careless in failing to record their ownership. *Shaw v. City of Kalispell*, 135 M 284, 340 P 2d 523.

Landowners who appear before the city council to protest the establishment of an improvement district do not thereby waive their right to restrain its establishment on the ground of defective publication

of notice. *Guffey v. City of Helena*, — M —, 369 P 2d 803, 806.

Operation and Effect

A special improvement district for the purpose of raising funds was void where one of the property owners affected was not mailed a notice. *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058.

Public Hearing

The statute contemplates a public hearing where the various objections made to the resolution of intention may be aired before actual work on the project has commenced. *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 813.

Purpose of Resolution

Notification is the prime purpose of the statute so that taxpayers will not be burdened with some improvement which they do not want, cannot afford, or do not need. *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 813.

The essential purpose of a resolution of intention is to: (1) apprise the taxpayers that the city intends to propose a special improvement district; (2) what area will be encompassed in the district; (3) what type and character of improvements will be included within the district; and (4) the cost of the improvements to be made. *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 813.

References

Cited in *Cyr v. City of Missoula*, 135 M 94, 337 P 2d 365, 366.

11-2206. (5229) Protests against proposed work.

References

Cited or applied in *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058, 1061;

Cyr v. City of Missoula, 135 M 94, 337 P 2d 365, 366; *Shaw v. City of Kalispell*, 135 M 284, 340 P 2d 523, 528.

11-2207. (5230) Jurisdiction to order proposed improvements.

References

Cited in *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 812.

11-2209. (5232) Bid for work and award of contract.

References

Cited in *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 812.

11-2214. (5238) Methods of payments of improvements.

Street Improvements

A city may create a special improvement district for street improvements where the street is also a part of a state highway and, in such instance, the con-

tracts for the work must be awarded by the state highway commission. *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058, 1062.

11-2218. May issue revenue bonds—sinking fund—refunding revenue bonds. (1) Any such municipality may issue and sell negotiable rev-

enue bonds for the construction of any such water or sewer system or combined water and sewer system when authorized so to do by a majority vote of the qualified electors voting on the question at an election called by the city council or other governing body of the municipality for that purpose, and noticed and conducted in accordance with the provisions of sections 11-2308 to 11-2310, inclusive; which bonds shall bear interest at a rate or rates and shall be sold at a price resulting in an average net interest cost, computed to the stated bond maturity dates, of not more than six per cent (6%) per annum and all bonds shall mature within forty (40) years from date of bonds, and may be registered as to ownership of principal only with the treasurer of said municipality, if so directed by the governing body. No bonds shall be sold for less than par, and each of said bonds shall state plainly on its face that it is payable only from a sinking fund, naming said fund and the ordinance and resolution creating it, and that it does not create an indebtedness within the meaning of any charter, statutory or constitutional limitation upon the incurring of indebtedness.

(2) Prior to the issuance of said bonds the city council or other governing body of such municipality shall adopt an ordinance or resolution authorizing the issuance and sale of said bonds, and must create a sinking fund for the payment of the bonds and the interest thereon and charges of the fiscal agency for making payment of the bonds and interest thereon.

(3) At or before the issuance and sale of any such bonds, the governing body shall, by resolution or ordinance, set aside to such sinking fund and pledge to the payment of the bonds and the interest thereon the net income and revenues of the system, including all additions thereto and replacements and improvements thereof subsequently constructed or acquired, up to an amount sufficient to provide for the payment of the principal and the interest on the bonds as such principal and interest shall become due and payable, and to accumulate and maintain reserves securing such payments in such amount as shall be deemed by the governing body to be necessary and expedient.

(4) The said net income and revenues above-mentioned shall be construed to mean all the gross income from said system less normal, reasonable and current expenses of operation and maintenance thereof.

(5) Said payments above-mentioned shall constitute a first and prior charge and lien on the entire net income and revenues derived from the operation of said system, provided that the governing body shall have power from time to time to establish the relative priority of the liens of successive issues of bonds upon said net income and revenues, subject to any restrictions contained in the ordinances or resolutions authorizing bonds of prior issues.

(6) Any such municipality, by ordinance or resolution adopted by its governing body, and without an election, may issue and sell negotiable revenue bonds in the manner provided in this section, to refund bonds previously issued for any of the foregoing purposes, whether issued under authority of this section or any other applicable law. Refunding bonds

may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds, or may be sold at a price not less than par plus accrued interest, but nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor, except in accordance with the terms of such outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable if the revenues pledged therefor are not sufficient, but not to refund any principal or interest due which can be paid from revenues then on hand.

(7) Any municipality having issued bonds payable from net revenues of its water and sewer system or combined water and sewer systems, whether under authority of this section or otherwise, may issue additional bonds after authorization by the qualified electors in the manner hereinabove provided, to finance the reconstruction and improvement of such system and the construction of additions thereto, and may provide that such additional bonds shall be payable from said net revenues on a parity with the outstanding bonds of such previous issues, subject to any restrictions upon such issuance which may be imposed by the resolutions or ordinances authorizing said outstanding bonds; or the governing body may provide for the issuance of refunding bonds, without an election, to retire such outstanding bonds and may, if desired, combine such refunding issue with the issue authorized by the electors for reconstruction, improvements and additions, or may include the amount required for such refunding in the amount of such additional issue when submitted to the electors.

(8) Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby, if they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient, or if the refunding bonds are combined with an issue of new bonds for reconstruction, improvements and additions and the lien of such new bonds upon the revenues of the system or systems must be junior and subordinate to the lien of the outstanding bonds refunded, under the terms of the ordinances or resolutions authorizing the outstanding bonds, as applied to circumstances existing on the date of refunding. Except as authorized in the preceding sentence, refunding bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least three-eighths of one per cent ($\frac{3}{8}$ of 1%) less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(9) In any case where refunding bonds are issued and sold six (6) months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, which is a member of the Federal Reserve System and has a combined

capital and surplus not less than one million dollars (\$1,000,000), and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which such bond may be called for redemption, and to pay and redeem the principal amount of each such bond at maturity, or, if prepayable, at its earliest redemption date, and any premium required for redemption on such date; and the resolution or ordinance authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom, and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: Banks for Cooperatives, Federal Home Loan Banks, Federal Intermediate Credit Banks, Federal Land Banks, and the Federal National Mortgage Association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

(10) Revenues and other funds on hand, in excess of amounts pledged by ordinances and resolutions authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment, may be used to pay the expenses incurred by the municipality for the purpose of such refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents. Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of such bonds and may be invested and disbursed as provided in subsection (9) hereof, to the extent consistent with the ordinances or resolutions authorizing such outstanding bonds.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963.

Amendment

The 1963 amendment divided the section into numbered subsections; combined two paragraphs into one sentence in subsection (2); inserted the words "in the manner provided in this section" in the first sentence of subsection (6); added the second and third sentences to subsection (6); substituted subsections (8), (9), and (10) for sentences reading: "Said refunding bonds, or any bonds of any such combined issue, may be exchanged at par and accrued interest for all or part of said outstanding bonds, with the consent of the holders thereof, or may be deposited in escrow for the purpose of

such exchange with a suitable bank or trust company within or without the state; or proceeds of the sale of the refunding or combined issue may be similarly deposited in escrow and applied to the redemption of all or part of the outstanding bonds at maturity or when the same are next prepayable according to their terms, and to the payment of accrued interest thereon and of any premium payable for redemption prior to maturity, and to the purchase and retirement of any outstanding bonds which can be so purchased at a price less than par plus interest to accrue to maturity or, if prepayable, at a price less than par plus interest to accrue to their earliest possible redemption date plus any premium payable upon redemption prior to maturity; and any revenue bond proceeds so deposited in escrow may be invested in general

obligations of the United States pending the use thereof for the purposes herein authorized, and any such investments shall be deposited with the escrow agent for safekeeping. Nothing herein shall, however, be deemed to authorize the refunding of any matured bonds for the payment of which net revenues on hand are sufficient, or to authorize the refunding of any outstanding bonds at a higher rate of interest unless available net revenues are insufficient to pay principal and interest due thereon, or unless the refunding is authorized simultaneously with

the issuance of additional bonds for reconstruction, improvements or additions, which, according to the terms of the outstanding bonds, must be junior and subordinate to the lien of such outstanding bonds upon the net revenues"; and made minor changes in phraseology.

Effective Date

Section 2 of Ch. 51, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 21, 1963.

11-2228. (5246) Costs and expenses considered as cost of improvements.

References

Cited in *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 812.

11-2231. (5249) Form of bonds and warrants. All costs and expenses incurred in the construction of any improvements specified in this act, in any improvement district, shall be paid for by special improvement district bonds or warrants. Such bonds or warrants shall be drawn in substantially the following form:

District No. _____
United States of America,
State of Montana

Warrant or _____ Dollars
(Bond No. _____) \$_____

Interest at the rate of _____ per cent per annum, payable annually. Special improvement district coupon warrant or bond
_____, Montana

Issued by the city of _____, Montana.

The treasurer of the city of _____, Montana, will pay to bearer, the sum of _____ dollars as authorized by resolution No. _____ as passed on the _____ day of _____, 19____, creating special improvement district No. _____ for the construction of the improvements and the work performed as authorized by said resolution to be done in said district, and all laws, resolutions, and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the city treasurer of _____, Montana.

This warrant (or bond) bears interest at the rate of _____ per cent per annum from the day of registration of this warrant (or bond), as expressed herein, until the date called for redemption by the city treasurer. The interest on this warrant (or bond) is payable annually on the first day of _____ in each year, unless paid previous thereto, and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the mayor and city clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement district, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the city at any time there are funds to the credit of said special improvement district fund for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done, precedent to the issuance of this warrant (or bond), have been properly done, happened and been performed, in the manner prescribed by the laws of the State of Montana and the resolutions and ordinances of the city of _____, Montana relating to the issuance thereof.

(seal)

Dated at _____, Montana, this _____ day of _____, 19____.

City of _____, Montana.

By: _____, Mayor
 _____, City Clerk

Registered at the office of the city treasurer of _____, Montana, this _____ day of _____, 19____.

_____ City Treasurer.

And the same shall be drawn against the special improvement district fund created for the district, and shall bear interest at a rate not exceeding six (6%) per cent per annum, from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the council prescribes another date. Such warrants (or bonds) shall bear the signatures of the mayor and clerk, and shall bear the corporate seal of the city. They shall be registered in the office of the clerk and treasurer, and if interest coupons be attached thereto, they shall also be so registered and shall bear the signatures of the mayor and clerk. Said bonds shall be in denominations of one hundred (\$100) dollars or fractions or multiples thereof, and may be issued in installments, and may extend over a period not to exceed twenty (20) years. Such warrants (or bonds) shall be redeemed by the treasurer when there are funds in the special improvement district fund against which said warrants (or bonds), on presentation of the coupons belonging thereto, and any funds remaining shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in the order of their registration; and provided, further that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or bonds) drawn against said fund, the treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the treasurer, who shall give notice by publication once in a newspaper published in the city, or at the option of the treasurer, by written notice to the holder or holders of such warrants (or bonds) if their address be known, of the number of warrants (or bonds) and the date on which payment will be made, which date shall not be less than ten (10) days after the date of publication or of service of notice, and on which date so fixed, interest shall cease.

History: En. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945; amd. Sec. 5, Ch. 260, L. 1959.

Amendment

The 1959 amendment, in the last paragraph, in the second sentence, substituted the words "bear the signatures of" for "be

signed by the mayor and clerk" and deleted a proviso from the third sentence in that paragraph which read "provided, however, that said coupons may bear the facsimile signature of said officers in the discretion of the city council."

References

Cited in *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 812.

11-2232. (5250) Payments under contracts.

References

Cited in *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 812.

11-2241. (5255) Owner of property—definition of terms, etc.

Publication of Notice

Landowners who appear before the city council to protest the establishment of an improvement district do not thereby waive their right to restrain its estab-

lishment on the ground of failure to publish notice in successive issues of a newspaper. *Guffey v. City of Helena*, — M —, 369 P 2d 803, 806.

11-2263. (5272) Street sprinkling.

Paving Projects

Where the work represents either a minor or major repaving or resurfacing project, it cannot be financed by special improvement taxes for the creation of a

sprinkling district, but must be financed under section 11-2401. *Cyr v. City of Missoula*, 135 M 94, 337 P 2d 365; *Peterson v. City of Missoula*, 135 M 96, 337 P 2d 367.

CHAPTER 23—MUNICIPAL BONDS AND INDEBTEDNESS

Section 11-2310. Who are entitled to vote—registration of electors.

11-2316. Form and execution of bonds.

11-2310. (5278.10) Who are entitled to vote—registration of electors.

Only such registered electors of the city or town whose names appear upon the last preceding assessment roll for state and county taxes, as taxpayers upon property within the city or town, shall be entitled to vote upon any proposition of issuing bonds by the city or town. Upon the adoption of the resolution calling for the election the city or town clerk shall notify the county clerk of the date on which the election is to be held and the county clerk must cause to be published in the official newspaper of the city or town, if there be one, and if not in a newspaper circulated generally in the said city or town and published in the county where the said city or town is located, a notice signed by the county clerk stating that registration for such bond election will close at noon on the fifteenth (15th) day prior to the date for holding such election and at that time the registration books shall be closed for such election. Such notice must be published at least five (5) days prior to the date when such election books shall be closed.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the qualified electors of such city or town who are taxpayers upon property therein and whose names appear on the last completed assessment roll for state, county and school district taxes and who are entitled to vote at such election and shall prepare precinct registers for such election as provided in section 23-515 and deliver

the same to the city or town clerk who shall deliver the same to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post such lists of qualified electors.

History: En. Sec. 10, Ch. 160, L. 1931; amd. Sec. 1, Ch. 182, L. 1939; amd. Sec. 17, Ch. 64, L. 1959.

Amendment

The 1959 amendment, in the second paragraph, substituted the words "precinct registers" for the words "poll books."

11-2316. (5278.16) Form and execution of bonds. At the time of the sale of the bonds, or at a meeting held thereafter, the city or town council shall prescribe the form of the bonds whether amortization or serial bonds, and of the coupons to be attached thereto. Each and every bond and every coupon attached thereto must be signed by the mayor of the city or town, by the treasurer thereof, and must be attested by the city or town clerk, and each bond shall have the city or town seal affixed thereto.

History: En. Sec. 16, Ch. 160, L. 1931; amd. Sec. 6, Ch. 260, L. 1959.

Amendment

The 1959 amendment deleted a proviso from the end of this section which authorized facsimiles of the signatures of the officers required to sign the coupons.

CHAPTER 24—MUNICIPAL REVENUE BOND ACT OF 1939

Section 11-2402. Definitions.

11-2404. Authorization of undertaking—form and contents of bonds.

11-2414. Refunding revenue bonds.

11-2402. Definitions. Whenever used in this act, unless a different meaning clearly appears from the context:

(a) The term "undertaking" shall mean any one or a combination of the following: water, and sewerage systems, together with all parts thereof and appurtenances thereto including, but not limited to, supply and distribution systems, reservoirs, dams, sewage treatment, disposal works, public airport construction and public airport building; or other revenue producing facilities and services authorized in these codes for cities and towns.

(b) The term "municipality" shall include any city or any town, however organized.

(c) The term "governing body" shall include bodies and boards, by whatsoever names they may be known, having charge of finances and management of a municipality.

History: En. Sec. 2, Ch. 126, L. 1939; amd. Sec. 1, Ch. 42, L. 1949; amd. Sec. 1, Ch. 111, L. 1959.

facilities and services authorized in these codes for cities and towns."

Amendment

The 1959 amendment in subd. (a) added the words "or other revenue producing

Repealing Clause

Section 2 of Ch. 111, Laws 1959 repealed all acts and parts of acts in conflict therewith.

11-2404. Authorization of undertaking—form and contents of bonds. The acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking may be authorized under this chapter, and bonds may be authorized to be issued under this chapter by resolution or resolutions of the governing body of the municipality, when authorized by a majority of the taxpayers voting upon such question at

a special election noticed and conducted as provided in sections 11-2308 to 11-2310, inclusive, and said special election shall be held not later than the next municipal election held after the council or governing body of the municipality has by resolution or resolutions approved the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking as in this chapter provided and ordered said special election; provided, that the issuance of refunding revenue bonds may be authorized by resolution or resolutions of the governing body of the municipality without an election.

Said bonds shall bear interest at such rate or rates not exceeding six per centum (6%) per annum, payable semiannually, may be in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty (40) years from their respective dates, may be payable in such place or places, may carry such registration privileges, may be subject to such terms of redemption, may be executed in such manner, may contain such terms, covenants and conditions, and may be in such form, either coupon or registered, as such resolution or subsequent resolutions may provide. Said bonds shall be sold at not less than par. Said bonds may be sold at private sale to the United States of America or any agency, instrumentality or corporation thereof. Unless sold to the United States of America or agency, instrumentality or corporation thereof, said bonds shall be sold at public sale after notice of such sale published once at least five (5) days prior to such sale in a newspaper circulating in the municipality and in a financial newspaper published in the city of New York, New York, or the city of Chicago, Illinois, or the city of San Francisco, California, except that, in the event the bond issue is in an amount of less than one hundred fifty thousand dollars (\$150,000), the bond issue shall be advertised at least five (5) days prior to such sale in daily newspapers circulating in Montana cities of 10,000 population or over, in lieu of advertising in a financial newspaper in New York, Chicago, or San Francisco, and also in a newspaper as specified in section 16-1201 if that newspaper is different from the daily newspapers circulating in Montana cities of 10,000 population or over. Pending the preparation of the definitive bonds, interim receipts or certificates in such form and with such provisions as the governing body may determine may be issued to the purchaser or purchasers of bonds sold pursuant to this chapter. Said bonds and interim receipts or certificates shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 52, and once by Ch. 264. Neither amendatory act mentioned nor incorporated the changes made by the other. However, since the two amendments do not appear to conflict, the compiler has made a combined section incorporating both. It should be noted,

however, that Ch. 264 does not take effect until January 1, 1965.

Amendments

Chapter 52, Laws 1963, added to the fourth sentence in the second paragraph all of the language following "San Francisco, California" and pertaining to bond issues of less than \$150,000.

Chapter 264, Laws 1963, substituted "as provided by the Uniform Commercial Code—Investment Securities" at the end of the section for "within the meaning of and for all the purposes of the negotiable instruments law."

11-2414. Refunding revenue bonds. (1) Refunding revenue bonds issued as authorized in section 11-2403 and 11-2404 shall be governed by all of the provisions of this chapter as fully as bonds issued for the initial financing of any undertaking, and by the further provisions of this section.

(2) Refunding revenue bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds, or may be sold at a price not less than par plus accrued interest. Nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor, except in accordance with the terms of such outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable, if the revenues pledged therefor are not sufficient, but not to refund any bonds or interest due which can be paid from revenues then on hand.

(3) Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby, if they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient, or if the refunding bonds are combined with an issue of new bonds for reconstruction, improvement, betterment or extension and the lien of such new bonds upon the revenues of the undertaking must be junior and subordinate to the lien of the outstanding bonds refunded, under the terms of the ordinances or resolutions authorizing the outstanding bonds, as applied to circumstances existing on the date of refunding. Except as authorized in the preceding sentence, refunding bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least three-eighths of one per cent ($\frac{3}{8}$ of 1%) less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(4) In any case where refunding bonds are issued and sold six (6) months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, which is a member of the Federal Reserve System and has a combined capital and surplus not less than one million dollars (\$1,000,000), and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which such bond may be called for redemption, and to pay and redeem the principal amount of each such bond at maturity or, if prepayable, at its earliest redemption date, and any premium required for redemption on such date; and the resolution or ordinance authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom, and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased

with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

(5) Revenues and other funds on hand, in excess of amounts pledged by ordinances and resolutions authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment, may be used to pay the expenses incurred by the municipality for the purpose of such refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents. Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of such bonds and may be invested and disbursed as provided in subsection (4) hereof, to the extent consistent with the ordinances or resolutions authorizing such outstanding bonds.

History: En. 11-2414 by Sec. 1, Ch. 50, L. 1963.

Title of Act

An act to amend Chapter 24, Title 11, Revised Codes of Montana, 1947, by the addition of section 11-2414, providing regulations governing the terms and con-

ditions of the refunding of municipal water and sewer revenue bonds.

Effective Date

Section 2 of Ch. 50, Laws 1963 provided the act should be in full force and effect from and after its passage and approval. Approved February 21, 1963.

CHAPTER 26—DAMAGE CAUSED BY CHANGE OF GRADE

11-2604. (5303) Appeals and proceedings thereunder.

Cross-Reference

see Table A, M. R. Civ. P. (sec. 93-2711-7).

Application of Montana Rules of Civil Procedure to appeal from appraisal,

CHAPTER 27—BUILDING REGULATIONS—ZONING COMMISSION

11-2707. (5305.7) Board of adjustment.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see Table A, M. R. Civ. P. (sec. 93-2711-7).

11-2710. Repealed.

Repeal

This section (Sec. 1, Ch. 171, L. 1959), giving zoning powers to boards of county commissioners, was repealed by Sec. 12, Ch. 246, Laws 1963.

Unconstitutional

This section (Sec. 1, Ch. 171, L. 1959), authorizing county commissioners to exer-

cise building and zoning regulatory powers was invalid as an unconstitutional attempt to delegate legislative powers to counties in violation of Article IV, sec. 1 of Montana Constitution. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1025.

CHAPTER 28—VACATION AND ABANDONMENT OF STREETS, PARKS AND TOWNSITES

11-2801. (5306) Discontinuation of streets—procedure.

Evidence of Public Detriment

Where the record did not show that the commissioners made a finding of fact that a street could be closed without detriment to the public interest but it did show a

detriment to abutting landowners, to the city, and to the public interest generally, the petition for discontinuance should have been denied. *Miller v. Schrock*, 135 M 409, 340 P 2d 154.

CHAPTER 30—ENTRY TOWNSITES ON PUBLIC DOMAIN FOR UNINCORPORATED CITIES AND TOWNS

11-3014. (5344) Adverse claims—actions for possession.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see Table A, M. R. Civ. P. (sec. 93-2711-7).

11-3026. (5356) District judge authorized to execute deeds, etc.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see Table A, M. R. Civ. P. (sec. 93-2711-7).

CHAPTER 32—COMMISSION-MANAGER FORM OF GOVERNMENT

Section 11-3215. Nomination of candidates—primary election.

11-3210. (5409) Powers of municipalities, etc.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 211.

11-3215. (5414) Nomination of candidates—primary election. (1) Candidates to be voted for at all general municipal elections at which commissioners are to be elected under the provisions of this act shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those nominated in the manner hereinafter prescribed. The primary election for such nominations shall be held on the last Tuesday of August of the odd-numbered years.

(2) to (4). * * * [Same as parent volume.]

(5) In the event the number of legally qualified candidates for the office of commissioner at such primary election does not exceed twice the number of vacancies in the commission to be filled, no municipal primary election for the nomination of candidates for the office of commissioner shall be held in said city for said year and such legally qualified candidates shall be deemed duly nominated and shall be placed on the general ballot.

History: En. Sec. 16, Ch. 152, L. 1917; re-en. Sec. 5414, R. C. M. 1921; amd. Sec. 1, Ch. 36, L. 1961.

Amendment

The 1961 amendment near the end of the first sentence in subd. (1) changed

"except those elected" to "except those nominated"; and added subd. (5).

Repealing Clause

Section 2 of Ch. 36, Laws 1961 repealed all acts and parts of acts in conflict therewith.

CHAPTER 35—CITY AND COUNTY CONSOLIDATED GOVERNMENT (continued)

Section 11-3518. Police department—powers of officers—director—duties and powers—designation as sheriff—deputies—tenure of officers—police reserve funds.

11-3523. Fire department—director—duties as chief—continuance, creation and abandonment of voluntary fire districts—supervision thereof.

11-3524. Firemen's tenure—firemen's disability and pension funds—how continued—protection of rights in.

11-3518. (5520.78) Police department—powers of officers—director—duties and powers—designation as sheriff—deputies—tenure of officers—police reserve funds. The police department shall be in charge of a director who shall be chief of the police force of the municipality. Officers and patrolmen of the police department, subordinate to the director, shall have the powers and perform the duties conferred on and required of police officers and patrolmen in cities and towns by the laws of this state and such powers and duties as may be conferred and required by the ordinances of the municipality. The director shall have the powers and perform the duties conferred on and required of sheriffs and police officers and patrolmen shall have the powers and perform the duties conferred on and required of deputy sheriffs by the general laws of the state. For the purpose of serving and making return on all criminal and civil process, executing judgments, decrees and orders of court and making sales thereunder and returns thereof, the director shall be known and designated as "Sheriff of the city and county of _____" and each police officer and patrolman shall be known and designated as deputy sheriff.

Any police officer employed by any police department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act, shall have the same job tenure rights as though no such election and qualification had taken place. Any such police officer who has vested rights in any police reserve fund shall maintain prior vested rights in such fund upon its transfer to a consolidated county municipality. Any police reserve fund established as required by law in any city or town of the county prior to the election and qualification of a commission under this act, shall be continued as such for the police department of the municipality, subject, however, to the prior vested rights of any police officer employed by any police department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act. The board of trustees of such police reserve fund shall consist of the president, the director of finance, the director of law and two (2) members of the police department from the active list of the police officers of said municipality, who shall be selected by a majority vote of the members of the police department on the active list of said municipality. Such selection shall be made between the first and tenth day

of May in each year and said active police officer members of said board shall serve overlapping two (2) year terms. Except as provided in this section, the police reserve fund shall be continued and administered in the manner prescribed by law for such funds established in cities and towns.

History: En. Sec. 77, Ch. 121, L. 1923;
amd. Sec. 1, Ch. 190, L. 1961.

Amendment

The 1961 amendment added a new second paragraph.

11-3523. (5520.83) Fire department—director—duties as chief—continuance, creation and abandonment of voluntary fire districts—supervision thereof. The fire department of the municipality shall be in charge of a director who shall be chief thereof and who shall manage and control the department in the manner prescribed by the ordinances of the municipality.

(h) Provided that notwithstanding any other provision of law the adoption of a consolidated county municipal government shall have no effect on the existence, rights or duties of any voluntary fire department or fire district created and legally in existence pursuant to the provisions of chapter 20, Title 11, Revised Codes of Montana, 1947.

(c) Provided further that nothing in chapter 34, Title 11, Revised Codes of Montana, 1947, shall be construed to prohibit the creation of voluntary fire departments or fire districts pursuant to the provisions of chapter 20, Title 11, Revised Codes of Montana, 1947, within consolidated county municipalities.

(d) Voluntary fire departments or fire districts within consolidated county municipalities shall only be organized, created, supported, financed, dissolved, managed, and their boundaries shall only be changed, pursuant to the provisions of chapter 20, Title 11, Revised Codes of Montana, 1947.

History: En. Sec. 82, Ch. 121, L. 1923;
amd. Sec. 1, Ch. 191, L. 1961.

Repealing Clause

Section 2 of Ch. 191, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1961 amendment added all of the section after the first paragraph.

11-3524. (5520.84) Firemen's tenure—firemen's disability and pension funds—how continued—protection of rights in. Any firemen employed by any fire department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act, shall have the same job tenure rights as though no such election and qualification had taken place. Any such fireman who has vested rights in any disability or pension fund shall maintain prior vested rights to such funds upon their transfer to a consolidated county municipality. Any disability or pension fund, or funds, of the fire department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act, shall be continued as one such fund for the fire department of the municipality, subject, however, to the prior vested rights of any firemen employed by any fire department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act. The board of trustees of such disability

or pension fund shall consist of the president, the director of finance, the director of law, the director of the fire department, and one member of the fire department selected by a majority of the members of such department between the first and tenth day of July of each year in which the municipality shall elect members of the commission. Except as provided in this section, the disability or pension fund of the fire department shall be continued and administered in the manner prescribed by law for such funds established in cities and towns.

History: En. Sec. 83, Ch. 121, L. 1923; amd. Sec. 1, Ch. 192, L. 1961.

Amendment

The 1961 amendment inserted two new sentences at the beginning of the section; substituted "disability or pension fund" for "disability fund" in each of the last three

sentences; and added to the present third sentence the words "subject, however, to the prior vested rights of any firemen employed by any fire department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act."

CHAPTER 37—OFF-STREET PARKING FACILITIES

Section 11-3714. Indenture for security of bonds.

11-3721. Funding or refunding bonds—negotiability.

11-3714. Indenture for security of bonds. The commission may enter into indentures providing for the aggregate principal amount, date, or dates, maturities, interest rate, denominations, form, registration, transfer and interchange of such bonds and coupons, and the terms and conditions upon which the same shall be executed, issued, secured, sold, paid, redeemed, funded and refunded. Reference on the face of the bonds to such indenture by its date of adoption, or the apparent date on the face thereof, is sufficient to incorporate all of the provisions thereof into the body of the bonds and their appurtenant coupons. Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to and is bound by all of the provisions of the indenture, to the extent that such provisions do not conflict with provisions stated in the bonds. An indenture pursuant to which bonds are issued may include such covenants and agreements on the part of the commission as the commission deems necessary or advisable for the better security of the bonds issued thereunder. An indenture may include any, or one, or all the following clauses relating to the bonds issued thereunder: Requiring the commission to pay or cause to be paid punctually the principal of all such bonds and the interest thereon on the date or dates at the place or places, and in the manner mentioned in such bonds and in the coupons appertaining thereto in accordance with such indenture; requiring the commission to make all repairs, renewals and replacements necessary to the operation of the project and to keep it at all times in good repair; requiring the commission to preserve and protect the security of the bonds and the rights of the holders thereof and to warrant and defend such rights; requiring the commission to pay and discharge or cause to be paid and discharged from the funds available for that purpose all lawful claims for labor, materials and supplies or other charges which, if unpaid, might become a lien or charge upon the revenues, or any part thereof, of any project acquired, constructed or completed

from the proceeds of the sale of the bonds or from other proceeds or upon any of the physical properties thereof which might impair the security of the bonds; which limits, restricts, or prohibits any right, power or privilege of the commission to mortgage or otherwise encumber, sell, lease or dispose of any project constructed from the proceeds of the bonds or from other proceeds, or to enter into any lease or agreement which impairs or impedes the operation of such project, or any part thereof, necessary to secure adequate revenues or which otherwise impairs or impedes the rights of the holders of the bonds with respect to such revenues.

Requiring the commission to fix, prescribe and collect fees, tolls, rentals or other charges in connection with the services and facilities furnished from the project acquired, constructed or purchased from part or all of the proceeds of the bonds or from other proceeds, sufficient to pay the principal of and interest on the bonds as they become due and payable, together with all expenses of operation, maintenance and repair of the project, and with such additional sums as may be required for any sinking fund, reserve fund or other special fund provided for the further security of such bonds or as a depreciation charge or other charge in connection with such project; requiring the commission to hold in trust the revenues pledged to the payment of such bonds and the interest thereon, or to any reserve or other fund created for the further protection of the bonds, and to apply such revenues or cause them to be applied only as provided in the indenture.

Limiting the power of the commission to apply the proceeds of the sale of any issue of bonds for the acquiring, constructing, or completing of any project or any part thereof, or more than one of such projects; limiting the power of the commission to issue additional revenue bonds for the purpose of acquiring, constructing or completing any improvement or any part thereof; requiring, specifying or limiting the kind, amount and character of insurance to be maintained by the commission on any project, or any part thereof, and the use and disposition of the proceeds of any such insurance thereafter collected; providing the events of default, and the terms and conditions upon which any or all of the bonds then or thereafter issued may become or be declared due and payable prior to maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

Designating the rights, limitations, powers and duties arising upon breach by the commission of any of the covenants, conditions, or obligations contained in any indenture; prescribing a procedure by which certain specified terms and conditions of the indenture may be subsequently amended or modified with the consent of the commission and the vote or written assent of the holders of a specified principal amount of the bonds issued and outstanding. Such clause may provide for meetings of bondholders and for the manner in which the consent of the bondholders may be given. The clause shall specifically state the effect of such amendment or modification upon the rights of the holders of all of the bonds and interest coupons appertaining thereto, whether attached thereto or detached therefrom.

With respect to any clause providing for the modification or amendment of an indenture, the commission may agree that bonds held by the commission, by any department, political subdivision or agency of the state of Montana, or by any public corporation, municipality, district or political subdivision shall not be counted as outstanding bonds, or be entitled to vote or assent but shall nevertheless, be subject to any such modification or amendment. [Effective January 1, 1965.]

History: En. Sec. 14, Ch. 223, L. 1951; amend. Sec. 11-107, Ch. 264, L. 1963. flict with provisions stated in the bonds" to the third sentence in the first paragraph; and made a minor change in phraseology.

Amendment

The 1963 amendment added "to the extent that such provisions do not con-

11-3721. Funding or refunding bonds—negotiability. Funding or refunding bonds may be issued in a principal amount sufficient to provide funds for the payment of all bonds to be funded or refunded thereby, and in addition for the payment of all expenses incident to the calling, retiring or paying of such outstanding bonds, and the issuance of such funding or refunding bonds. These expenses include the difference in amount between the par value of the funding or refunding bonds and any amount less than par for which the funding or refunding bonds are sold, any amount necessary to be made available for the payment of interest upon such funding or refunding bonds from the date of sale thereof to date of payment of the bonds to be funded or refunded or to the date upon which the bonds to be funded or refunded will be paid pursuant to the call thereof or agreement with the holders thereof, and the premium, if any, necessary to be paid in order to call or retire the outstanding bonds and the interest accruing thereon to the date of the call or retirement. All bonds issued under the provisions of this act shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities. [Effective January 1, 1965.]

History: En. Sec. 21, Ch. 223, L. 1951; amend. Sec. 11-108, Ch. 264, L. 1963. Uniform Commercial Code—Investment Securities" at the end of the section for "are negotiable instruments, except when registered in the name of a registered owner."

Amendment

The 1963 amendment substituted "shall be fully negotiable, as provided by the

CHAPTER 38—CITY OR CITY-COUNTY PLANNING BOARDS

- Section 11-3801. City planning boards or city-county planning boards authorized—purpose of act.
- 11-3803. Definitions.
- 11-3804. City planning board.
- 11-3808. Citizen members—qualifications.
- 11-3810. City-county planning boards—members—term of officer members.
- 11-3812. Citizen members of city-county board—qualifications.
- 11-3813. Removal of citizen appointee.
- 11-3818. Quorum—official action.
- 11-3820. Expenses while attending conferences in another city, county, or state.
- 11-3824. Powers and duties.
- 11-3825. Funds for operation—tax levy authority.
- 11-3828. Master plan—policies.
- 11-3830. Jurisdictional area.
- 11-3831. Master plan—contents.
- 11-3833. Notice of hearing prior to adoption of master plan.

- 11-3834. Resolution adopting master plan and recommending ordinance.
- 11-3840. Adoption of master plan—policy and pattern of development.
- 11-3842. Plats of subdivisions—approval by planning board.
- 11-3843. Application for approval of plat.
- 11-3844. Determination of whether application for approval should be granted.
- 11-3845. Regulations governing procedure for application or approval of plats.
- 11-3846. Approval or disapproval of application for plat.
- 11-3847. Fees.
- 11-3848. Filing and recording of plat involving lands covered by master plan and ordinance without effect unless approved by city council.
- 11-3851. Appeals.
- 11-3853. Act not to prevent recovery and use of mineral or forest or agricultural resources.
- 11-3855. Validation of prior zoning ordinances, rules and regulations.

11-3801. City planning boards or city-county planning boards authorized—purpose of act. The governing body of any city or the governing bodies of any two or more cities and the county in which such city or cities are located jointly may create a planning board in order to promote the orderly development of its governmental units and its environs. It is the object of this legislation to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned, that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.

In accomplishing this objective, it is the intent of this legislation that the planning board shall serve in an advisory capacity to presently established boards and officials.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963.

Amendment

The 1963 amendment deleted from the end of the second paragraph a clause reading, "and in addition, that certain

regulatory powers be created over developments affecting the public welfare and not now otherwise controlled, and that additional powers be granted legislative bodies of cities and counties to carry out the purposes of this act."

DECISIONS UNDER FORMER LAW

Partial Invalidity

The former provision in this section "that additional powers be granted legislative bodies of cities and counties" was invalid, in so far as it applied to counties, as an un-

constitutional attempt to delegate legislative powers to counties in violation of Article IV, sec. 1 of Montana Constitution. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1025.

11-3803. Definitions. As used in this act:

1 to 3. * * * [Same as parent volume.] ✓

4. "Master plan" means a comprehensive development plan or any of its parts such as a plan of land use and zoning, of thoroughfares, of sanitation, of recreation, and other related matters. The plan may propose ordinances or resolutions for possible adoption by the appropriate governing body.

5 to 9. * * * [Same as parent volume.] ✓ *see p 5*

10. "Person" means individual firm, or corporation.

11. "Governing body or governing bodies" means the governing body of any governmental unit represented on a planning board.

12. "Plat" means a subdivision of land into lots, streets and areas, marked upon the earth and represented on paper; and includes re-plats or amended plats.

History: En. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted "comprehensive development plan" near the beginning of paragraph 4 for "complete master plan"; substituted "a plan" before "of land use" in paragraph 4 for "master plan"; substituted the second sentence of

paragraph 4 for a clause reading, "and including such ordinances, laws, or resolutions as may be deemed necessary to implement such complete master plan or parts thereof by legislative approval and provision for such regulations as are deemed necessary and their enforcement"; deleted a comma between "individual" and "firm" in paragraph 10; and added paragraph 12.

11-3804. City planning board. A city planning board shall consist of not less than seven (7) members to be appointed as follows:

a. One (1) member to be appointed by the city council from its membership;

b. One (1) member to be appointed by the city council who may in the discretion of the city council be an employee or hold public office in the city or county in which the city is located;

c. One (1) member to be appointed by the mayor upon the designation by the county commissioners of the county in which the city is located;

d. Four (4) citizen members to be appointed by the mayor, two (2) of whom shall be resident freeholders within the urban area, if any, outside of the city limits over which the planning board has jurisdiction under this act and two (2) of whom shall be resident freeholders within the city limits. Such citizen members shall hold no other office in the city government.

History: En. Sec. 4, Ch. 246, L. 1957; amd. Sec. 1, Ch. 271, L. 1959.

Amendment

The 1959 amendment, in subd. d., substituted the words "of whom shall be

resident freeholders within the urban area" for "members of which shall be residents of the urban area"; added the clause pertaining to resident freeholders within the city; and added the final sentence.

11-3808. Citizen members—qualifications. The citizen members shall be qualified by knowledge and experience in matters pertaining to the development of the city and shall hold no other office in the city government and shall be resident freeholders of such city or jurisdictional area as defined in section 11-3830, R.C.M. 1947.

History: En. Sec. 8, Ch. 246, L. 1957; amd. Sec. 3, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted "resident freeholders of such city or jurisdictional area as defined in section 11-3830, R.C.M. 1947" at the end of the section for "residents of such city or the urban area outside of the city limits over which the planning board has jurisdiction under this act."

tional area as defined in section 11-3830, R.C.M. 1947" at the end of the section for "residents of such city or the urban area outside of the city limits over which the planning board has jurisdiction under this act."

11-3809. Repealed.**Repeal**

This section (Sec. 9, Ch. 246, L. 1957), relating to the terms of citizen members

of the board, was repealed by Sec. 8, Ch. 271, Laws 1959.

11-3810. City-county planning boards—members—term of officer members. 1. A city-county planning board shall consist of not less than nine (9) members to be appointed as follows:

a. Two (2) official members to be appointed by the board of county commissioners who may in the discretion of the board of county commissioners be employed by or hold public office in the county.

b. Two (2) official members to be appointed by the city council who may in the discretion of the city council be employed by or hold public office in the city.

c. Two (2) citizen members to be appointed by the mayor of the city.

d. Three (3) citizen members to be appointed by the board of county commissioners. The three (3) members must reside outside the city limits but within the jurisdictional area of the planning board.

2. The terms of the members who are officers of any governmental unit represented on the board shall be coextensive with their respective terms of office to which they have been elected or appointed; the terms of the other members shall be two (2) years, except that the terms of the first members appointed shall be fixed by agreement and rule of the governing bodies represented on the board for one (1) or two (2) years in order that a minimum number of terms shall expire in any year.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963.

graph 1 d; reduced the terms of non-governmental members, as specified in subsection 2, from four to two years; substituted "one (1) or two (2) years" in the latter part of subsection 2 for "one (1) to four (4) years"; and made minor changes in phraseology.

Amendment

The 1963 amendment inserted the numerical designations for the two subsections; added the second sentence to para-

11-3812. Citizen members of city-county board—qualifications. The citizen members of the city-county planning board shall be resident freeholders in the area over which the planning board has jurisdiction, provided, however, that at least two (2) of such members shall be resident freeholders in the area, if any, outside the city limits over which the planning board has jurisdiction.

History: En. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959.

clerical error as it was set out as "11-3182." The reference should have read "11-3812."

Compiler's Note

The beginning of the amending section correctly identified this section as the one to be amended; however, in setting out the section as amended there was an obvious

Amendment

The 1959 amendment completely rewrote this section. For section prior to amendment see parent volume.

11-3813. Removal of citizen appointee. Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

History: En. Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963.

Amendment

The 1963 amendment deleted a first paragraph, for text of which see parent volume; and made a minor change in phraseology.

11-3818. Quorum—official action. A majority of members shall constitute a quorum; no action of the planning board is official, however, unless authorized by a majority of members of the board at a regular or properly called special meeting.

History: En. Sec. 18, Ch. 246, L. 1957; **Amendment**
amd. Sec. 6, Ch. 247, L. 1963.

The 1963 amendment inserted "of members" after "majority" in the latter part of the section.

11-3820. Expenses while attending conferences in another city, county, or state. When the planning board determines that it is necessary for members or employees to attend, in another city, county or state a regional or national conference or interview dealing with planning or related problems, the planning board may pay the actual expenses of the attending members or employee provided the amount has been made available in the board's appropriation.

History: En. Sec. 20, Ch. 246, L. 1957; **Amendment**
amd. Sec. 7, Ch. 247, L. 1963.

The 1963 amendment substituted "planning board" for "commission" in the latter part of the section.

11-3824. Power and duties. To effectuate the purpose of this act, the board shall have the power and duty to:

1 to 5. * * * [Same as parent volume.] ✓

6. Make recommendations and an annual report to any governing bodies represented on the board concerning the operation of the board and the status of planning within its jurisdiction.

7. Prepare, publish, and distribute reports, proposed ordinances and proposed resolutions and other material relating to the activities authorized under this act.

8. Prepare and submit to the governing bodies represented on the board an annual budget in the same manner as other departments of the city and county governments and shall be limited in all expenditures to the provisions made therefor by the governing bodies represented upon the board.

History: En. Sec. 24, Ch. 246, L. 1957;
amd. Sec. 8, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted "any governing bodies" in paragraph 6 for "the mayor and city council and the board of county commissioners of any govern-

mental units"; inserted "proposed" before "ordinances" in paragraph 7; inserted "and proposed resolutions" after "ordinances" in paragraph 7; deleted former paragraphs 8, 9, 10, and 12, for text of which see parent volume; and redesignated former paragraph 11 as 8.

11-3825. Funds for operation—tax levy authority. 1. After a city council has by ordinance or a city council and board of county commissioners have, by ordinance and resolution, created a planning board, the governing bodies represented upon such board may appropriate funds to carry out the duties of the planning board.

2. When a planning board has been created by agreement of more than one (1) governmental unit, the governing bodies of the governmental units which have created the board shall agree upon the proportion of

expenditures to be borne by each such unit and may budget and appropriate the funds necessary for the respective shares thus agreed upon.

3. The governing body of any city or town represented upon a planning board may levy a tax upon the property located within such city or town not to exceed one (1) mill for planning board purposes, under procedures set forth in Title 11, Chapter 14, R.C.M. 1947.

4. When a city-county planning board has been established, the board of county commissioners may create a planning district which shall include that property within the jurisdictional area as established pursuant to section 11-3830, which lies outside the limits of any incorporated cities and towns; and the board of county commissioners may levy on all property located within such planning district a tax not to exceed one (1) mill for planning board purposes, under procedures set forth in Title 16, Chapter 19, R.C.M. 1947.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963.

Amendment

The 1963 amendment inserted numerical designations for the four subsections; substituted "may" for "shall" before "budget and appropriate" in the latter part of subsection 2; increased the tax levies authorized by subsections 3 and 4 from one-half mill to one mill; added "under procedures set forth in Title 11, Chapter 14, R.C.M. 1947" at the end of

subsection 3; substituted "planning district" for "planning and zoning district" in the early part of subsection 4; substituted "that property within the jurisdictional area as established pursuant to section 11-3830" in subsection 4 for "only that property within the limits of a master plan or proposed master plan as defined in section 11-3830"; and added "under procedures set forth in Title 16, Chapter 19, R.C.M. 1947" at the end of subsection 4.

11-3828. Master plan—policies. 1. To assure the promotion of public health, safety, morals, convenience, order, or the general welfare and for the sake of efficiency and economy in the process of community development, the planning board shall prepare a master plan and shall serve in an advisory capacity to the local governing bodies establishing the planning board.

2. The planning board may also propose policies for:

- a. subdivision plats
- b. the development of public ways, public places, public structures, and public and private utilities.
- c. the issuance of improvement location permits on platted and unplatted lands.
- d. the laying out and development of public ways and services to platted and unplatted lands.

3. The city council may in its discretion require the city-county planning board to function as the zoning commission authorized under section 11-2706, R.C.M. 1947.

4. The governing bodies of the city or county shall give consideration to recommendations of the city-county planning board but the governing bodies shall not be bound by such recommendations.

History: En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963.

Amendment

The 1963 amendment inserted numerical designations for the subsections; inserted

"community" before "development" in subsection 1; substituted the words "and shall serve in an advisory capacity to the local governing bodies establishing the planning board" at the end of subsection 1 for sentences reading, "Upon the cre-

ation of a planning board under the terms of this act and before such time as a master plan has been adopted, as provided in this act, a planning board so created shall serve in an advisory capacity to the local governing bodies establishing a planning board and shall consider and make recommendations to the city or cities or county on all subdivision and convenience plats presented to the city council or board of county commissioners prior to the subdivision or convenience plat receiving final

approval for filing by the proper local governmental authority. The city or county shall not be bound by the recommendation but shall give consideration to the recommendations so made"; substituted the preliminary clause of subsection 2 for "It may also formulate policies for"; inserted clause a in subsection 2; redesignated former clauses 1, 2, and 3 as clauses b, c, and d of subsection 2; made minor changes in phraseology; and added subsections 3 and 4.

Pl. Sec. Act

11-3830. Jurisdictional area. 1. The governing bodies represented on a city-county planning board shall by separate resolution establish the jurisdictional area of the planning board. The jurisdictional area shall include the area within the incorporated limits of the city and such contiguous unincorporated area outside the city as, in the judgment of the respective governing bodies, bears reasonable relation to the development of the city. The jurisdictional area shall not extend more than four and one-half ($4\frac{1}{2}$) miles beyond the limits of any city within the jurisdictional area.

2. The planning board, after approval of the jurisdictional area by the governing bodies, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolutions of the governing bodies. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

3. In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved, with the approval of their respective governing bodies, and a map showing the boundary lines so agreed upon and approved shall be filed as provided in this section, and thereafter shall fix the limit of territorial jurisdiction of the respective planning boards.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963.

Amendments

The 1959 amendment completely re-wrote the section to read as follows: "The planning board shall prepare and adopt a master plan for the development of the city wherein it was created and such contiguous unincorporated area outside the city as, in the judgment of the planning board, bears reasonable relation to the development of the city. Before exercising any authority or jurisdiction over such unincorporated area, the planning board, after approval by the board of county commissioners, shall file in the office of the clerk and recorder a map or plat showing the boundaries of such unincorporated area. With the approval of the board of county commissioners, such

boundaries may be revised from time to time by the planning board. Such revised boundaries shall be shown upon a map or plat which shall be filed as above provided. The area included in such map or plat shall constitute the area over which the planning board shall have jurisdiction.

In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved, with the approval of their respective governing bodies, and a map or plat showing the boundary lines so agreed upon and approved shall be filed as a part of any master plan or plans, and thereafter shall fix the limit of territorial jurisdiction with respect to decisions, orders or other actions to be made or taken by the respective planning boards or the governing bodies of

cities or counties involved under the authority of this act; provided, however, that in the case of counties not exceeding twenty thousand (20,000) in population, the jurisdictional limits of the city-county planning board shall not extend more than six (6) miles from the limits of any class of city or town, incorporated or unincorporated, within such county, and in

counties exceeding twenty thousand (20,000) population said limits shall not extend beyond twelve (12) miles from the limits of any city or town, incorporated or unincorporated, within such county."

The 1963 amendment again completely rewrote the section and divided it into numbered subsections.

DECISIONS UNDER FORMER LAW

Partial Invalidity

The former provisions empowering city-county planning boards to develop and exercise complete discretion in developing master plans for contiguous unincorporated areas surrounding cities within a

radius of twelve miles of such cities were invalid as an unconstitutional attempt to delegate legislative powers to counties in violation of Article IV, sec. 1 of Montana Constitution. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1025.

11-3831. Master plan—contents. The planning board shall prepare and propose a master plan for the jurisdictional area, which plan may include;

1. Careful and comprehensive surveys and studies of existing conditions and the probable future growth of the city and its environs or of the county.

2. Maps, plats, charts, and descriptive material presenting basic information, locations, extent and character of any of the following:

- a. History, population, and physical site conditions;
- b. Land use, including the height, area, bulk, location and use of private and public structures and premises;
- c. Population densities;
- d. Community centers and neighborhood units;
- e. Blighted and slum areas;
- f. Streets and highways, including bridges, viaducts, subways, parkways, alleys, and other public ways and places;
- g. Sewers, sanitation, and drainage, including handling, treatment, and disposal of excess drainage waters, sewage, garbage, refuse, and other wastes;
- h. Flood control and prevention;
- i. Public and private utilities, including water, light, heat, communication, and other services;
- j. Transportation, including rail, bus, truck, air, and water transport, and their terminal facilities;
- k. Local mass transit, including motor and trolley bus, street, elevated or underground railways, and taxicabs;
- l. Parks and recreation, including parks, playgrounds, reservations, forests, wild life refuges, and other public grounds, spaces, and facilities of a recreational nature;
- m. Public buildings and institutions, including governmental administration and service buildings, hospitals, infirmaries, clinics, penal and correctional institutions, and other civic and social service buildings;
- n. Education, including location and extent of schools, colleges, and universities;

o. Land utilization, including areas for manufacturing, and industrial uses, concentration of wholesale, retail business, and other commercial uses, residential, and areas for mixed uses;

p. Conservation of water, soil, agricultural, and mineral resources;

q. Any other factors which are a part of the physical, economic, or social situation within the city or county.

3. Reports, maps, charts, and recommendations setting forth plans for the development, redevelopment, improvement, extension, and revision of the subjects and physical situations of the city or county set out in part 2 of this section so as to substantially accomplish the object of this legislation as set out in section 11-3801.

4. A long-range development program of public works' projects, based on the recommended plans of the planning board, for the purpose of eliminating unplanned, unsightly, untimely, and extravagant projects and with a view to stabilizing industry and employment, and the keeping of such program up-to-date, for all separate taxing units within the city or county, respectively, for the purpose of assuring efficient and economic use of public funds.

History: En. Sec. 31, Ch. 246, L. 1957;
amd. Sec. 12, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted the preliminary clause for "A master plan may include:".

11-3832. Repealed.

Repeal

This section (Sec. 32, Ch. 246, L. 1957), relating to amended or additional plans

for streets and highways, was repealed by Sec. 26, Ch. 247, Laws 1963.

11-3833. Notice of hearing prior to adoption of master plan. 1. Prior to the submission of the proposed master plan to the governing bodies, the board shall give notice and hold a public hearing on the plan.

2. At least ten (10) days prior to the date set for hearing, the board shall publish in a newspaper of general circulation in the jurisdictional area a notice of the time and place of the hearing.

History: En. Sec. 33, Ch. 246, L. 1957;
amd. Sec. 13, Ch. 247, L. 1963.

words "and a proposed ordinance for its enforcement"; and substituted the words "jurisdictional area" in subsection 2 for "area over which the board has jurisdiction."

Amendment

The 1963 amendment divided the section into numbered subsections; substituted "submission of the proposed master plan to the governing bodies" in subsection 1 for "adoption of a master plan"; deleted from the end of subsection 1 the

References

Plath v. Hi-Ball Contractors, Inc., 139 M 263, 362 P 2d 1021, 1025.

11-3834. Resolution adopting master plan and recommending ordinance. After consideration of the recommendations and suggestions elicited at the public hearing, the planning board shall by resolution recommend the proposed master plan and any proposed ordinances and resolutions for its implementation to the governing bodies of the governmental units represented on the board.

History: En. Sec. 34, Ch. 246, L. 1957;
amd. Sec. 14, Ch. 247, L. 1963.

Amendment

The 1963 amendment substantially re-wrote this section. For previous text, see parent volume.

11-3835 to 11-3839. Repealed.

Repeal

These sections (Secs. 35 to 39, Ch. 246, L. 1957), relating to adoption of master plans by planning boards, action thereon

by governing bodies, and amendments subsequent to adoption, were repealed by Sec. 26, Ch. 247, Laws 1963.

11-3840. Adoption of master plan—policy and pattern of development.

The governing bodies shall adopt, revise or reject such proposed plan or any of its parts. After adoption of the master plan the city council, the board of county commissioners, or other governing body within the territorial jurisdiction of the board shall be guided by and give consideration to the general policy and pattern of development set out in the master plan in the:

1. Authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;
2. Authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities;
3. Adoption of subdivision controls;
4. Adoption of zoning ordinances or resolutions.

History: En. Sec. 40, Ch. 246, L. 1957;
amd. Sec. 15, Ch. 247, L. 1963.

Amendment

The 1963 amendment inserted the first sentence and added clauses 3 and 4.

11-3841. Repealed.

Repeal

This section (Sec. 41, Ch. 246, L. 1957), relating to the control over plats, was repealed by Sec. 8, Ch. 271, Laws 1959.

11-3842. Plats of subdivisions—approval by planning board. 1. Where a master plan has been approved, the city council may by ordinance require subdivision plats to conform to the provisions of the master plan. Certified copies of such ordinance shall be filed with the city or town clerk and with the county clerk and recorder of the county.

2. Thereafter a plat involving lands within the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board which shall make a report to the city council advising as to compliance or noncompliance of the plat with the master plan. The city council shall have the final authority to approve the filing of such plat.

3. Nothing herein contained shall be interpreted to limit the present powers of the city or county governments, but shall be an additional requirement before any plat may be filed of record or entitled to be recorded.

History: En. Sec. 42, Ch. 246, L. 1957;
amd. Sec. 4, Ch. 271, L. 1959; amd. Sec. 16, Ch. 247, L. 1963.

master plan and an ordinance, containing provisions for subdivision control and the approval of plats and re-plats, have been adopted and a certified copy of the ordinance has been filed with the county clerk and recorder, a plat of a subdivision shall not be filed with the county clerk and

Amendments

The 1959 amendment revised the original text to read as follows: "After a

recorder or the city or town clerk unless compliance with the master plan has first been approved and endorsed upon the plat by the planning board having jurisdiction over the area"; and added a second paragraph which, as amended in 1963, now constitutes subsection 3.

The 1963 amendment substituted new subsections 1 and 2 for the former first paragraph; designated the paragraph added by the 1959 amendment as subsection 3; substituted "limit" for "usurp" in the first part of subsection 3; and substituted "be" for "add" before "an additional requirement" in subsection 3.

11-3843. Application for approval of plat. 1. A person desiring the approval of a plat involving lands within the corporate limits of the city and covered by said master plan shall submit a written application for a certificate together with a copy of the proposed plat to the planning board having jurisdiction.

2. When the board tentatively finds that the application conforms to the requirements of the master plan or subdivision ordinance, it shall set a date for a hearing, notify the applicant in writing, and notify by general publication or otherwise any person or governmental unit having a probable interest in the proposed plat.

History: En. Sec. 43, Ch. 246, L. 1957; amd. Sec. 17, Ch. 247, L. 1963.

Amendment

The 1963 amendment divided the section into numbered subsections; inserted "involving lands within the corporate limits of the city and covered by said

master plan" in subsection 1; and substituted "When the board tentatively finds that the application conforms to the requirements of the master plan or subdivision ordinance, it" at the beginning of subsection 2 for "Upon receipt of the application, the board, if it tentatively approves the application."

11-3844. Determination of whether application for approval should be granted. In determining whether an application for approval shall be recommended, the board shall determine if the plat provides for:

1. Coordination of subdivision streets with existing and planned streets or highways.
2. Coordination with an extension of facilities included in the master plan.
3. Establishment of minimum width, depth, and area of lots within the projected subdivision.
4. Fair allocations of areas for streets, parks, and utilities.

History: En. Sec. 44, Ch. 246, L. 1957; amd. Sec. 18, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted "recommended" for "granted" in the preliminary clause.

11-3845. Regulations governing procedure for application or approval of plats. The planning board shall adopt and publish written regulations governing the procedure for application for approval of plats of the lands within its advisory jurisdiction.

History: En. Sec. 45, Ch. 246, L. 1957; amd. Sec. 19, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted "for" for "or" after "application"; and inserted "advisory" before "jurisdiction."

11-3846. Approval or disapproval of application for plat. After hearing and within forty-five (45) days after application for approval of the

plat, the board shall recommend approval or disapproval to the city council. If the board recommends disapproval, it shall set forth its reasons in a communication to the city council and provide the applicant with a copy.

History: En. Sec. 46, Ch. 246, L. 1957; amd. Sec. 20, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted "recommend approval or disapproval to the city council" at the end of the first sentence for "approve or disapprove it"; deleted a second sentence reading, "If the

board approves, it shall affix the commission's seal upon the plat"; substituted "If the board recommends disapproval" at the beginning of the present second sentence for "If it disapproves"; and substituted "in a communication to the city council" in the present second sentence for "in its own records."

11-3847. Fees. The city council shall establish a uniform schedule of fees proportioned to the cost of checking and verifying the proposed plats. An applicant shall pay the specified fee at the time of filing his application. These fees shall be credited to a fund established by the governing bodies for the planning board.

History: En. Sec. 47, Ch. 246, L. 1957; amd. Sec. 21, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted "The city council shall" for "The board may" at the beginning of the section; and added the third sentence.

11-3848. Filing and recording of plat involving lands covered by master plan and ordinance without effect unless approved by city council.

After a master plan and ~~and~~ ordinance containing provisions for subdivision control and the approval of plats have been adopted and a certified copy of the ordinance has been filed with the county clerk and recorder, the filing and recording of a plat involving lands within the corporate limits of the city and covered by such master plan and ordinance shall be without legal effect unless approved by the city council.

History: En. Sec. 48, Ch. 246, L. 1957; amd. Sec. 22, Ch. 247, L. 1963.

Amendment

The 1963 amendment deleted "and replats" following "approval of plats"; inserted "within the corporate limits of the city and" in the latter part of the section; and substituted "city council" for "board" at the end of the section.

Compiler's Note

The compiler has enclosed the word "and" in brackets to indicate superfluity.

11-3849. Repealed.

Repeal

This section (Sec. 49, Ch. 246, L. 1957), relating to the requirement of structures

conforming to the master plan and ordinance, was repealed by Sec. 8, Ch. 271, Laws 1959.

11-3850. Repealed.

Repeal

This section (Sec. 50, Ch. 246, L. 1957), relating to the issuance of improvement

location permits, was repealed by Sec. 8, Ch. 271, Laws 1959.

11-3851. Appeals. A decision of a city council rejecting a proposed subdivision plat may be reviewed by the district court upon application for a writ of certiorari. The application shall specify the grounds upon which it alleges the illegality of the action of the city council.

History: En. Sec. 51, Ch. 246, L. 1957; amd. Sec. 23, Ch. 247, L. 1963.

Amendment

The 1963 amendment substantially rewrote this section. For previous text, see parent volume.

11-3852. Repealed.

Repeal

This section (Sec. 52, Ch. 246, L. 1957; Sec. 5, Ch. 271, L. 1959), granting zoning powers to city councils and boards of county commissioners, was repealed by Sec. 12, Ch. 246, Laws 1963.

Partial Invalidity

The provisions of this section authorizing county commissioners to exercise building and zoning regulatory powers were invalid as an unconstitutional attempt to delegate legislative powers to counties in violation of Article IV, sec. 1 of Montana Constitution. *Plath v. Hi-Ball Contractors, Inc.* 139 M 263, 362 P 2d 1021, 1025.

11-3853. Act not to prevent recovery and use of mineral or forest or agricultural resources. Nothing in this act shall be deemed to authorize an ordinance, resolution, rule, or regulation which would prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

History: En. Sec. 53, Ch. 246, L. 1957; amd. Sec. 6, Ch. 271, L. 1959.

Amendment

The 1959 amendment substituted the word "resolution" for "law" and substituted the last part of the section, beginning with "development," for "develop-

ment, recovery, and sale of any mineral resources or forests by the owner thereof, or the construction of buildings, railroads, or other structures or equipment necessary to the full use, development, recovery, and sale of mineral or forest resources."

11-3854. Repealed.

Repeal

This section (Sec. 54, Ch. 246, L. 1957; Sec. 7, Ch. 271, L. 1959), granting zoning commission powers to planning boards, was repealed by Sec. 12, Ch. 246, Laws 1963, and by Sec. 26, Ch. 247, Laws 1963.

Partial Invalidity

The provisions of this section authorizing county commissioners to exercise zoning regulatory powers were invalid as an unconstitutional attempt to delegate legislative powers to counties in violation of Article IV, sec. 1 of Montana Constitution. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1025.

11-3855. Validation of prior zoning ordinances, rules and regulations. All zoning ordinances or resolutions and rules and regulations and all amendments, supplements, and changes thereto legally adopted under any prior enabling act and all actions taken under the authority of any such ordinances or resolutions, are hereby validated and continued in effect, until amended or repealed by action of the governing bodies taken under the authority of this act.

History: En. Sec. 55, Ch. 246, L. 1957; amd. Sec. 24, Ch. 247, L. 1963.

Amendment

The 1963 amendment inserted "or resolutions" after "ordinances" in two places; substituted "governing bodies" for "city council of such city" near the end of the section; and deleted a second sentence which read, "These ordinances shall have the same effect as though previously

adopted as a master plan of land use or parts thereof."

Saving Clause

Section 25 of Ch. 247, Laws 1963 read "Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act."

Repealing Clause

Section 26 of Ch. 247, Laws 1963 read
 "Section 11-3832, 11-3835, 11-3836, 11-

3837, 11-3838, 11-3839, 11-3854, 11-3856,
 11-3857, and 11-3858, R.C.M. 1947 are re-
 pealed."

11-3856 to 11-3858. Repealed.**Repeal**

These sections (Secs. 56 to 58, Ch. 246,
 L. 1957), relating to enforcement of zon-

ing ordinances and to the termination of
 zoning district provisions, were repealed
 by Sec. 26, Ch. 247, Laws 1963.

CHAPTER 39—URBAN RENEWAL LAW

- Section 11-3901. Definitions.
 11-3902. Findings and declarations of necessity.
 11-3903. Encouragement of private enterprise.
 11-3904. Workable program.
 11-3905. Finding of necessity by local governing body.
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 renewal plans.
 11-3907. Powers.
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 11-3910. Issuance of bonds.
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 an execution.
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 11-3916. Urban renewal agency.
 11-3917. Prohibition against discrimination.
 11-3918. Interested public officials, commissioners, or employees.
 11-3919. Separability—act controlling.
 11-3920. Short title.

11-3901. Definitions. The following terms wherever used or referred
 to in this act, shall have the following meanings, unless a different mean-
 ing clearly indicated by the context:

(a) "Agency" or "urban renewal agency" shall mean a public agency
 created by section 16 [11-3916] of this act.

(b) "Blighted area" shall mean an area which, by reason of the
 substantial physical dilapidation, deterioration, defective construction,
 material, and arrangement and/or age obsolescence of buildings or im-
 provements, whether residential or non-residential, inadequate provision
 for ventilation, light, proper sanitary facilities, or open spaces as determined
 by competent appraisers on the basis of an examination of the building
 standards of the municipality; inappropriate or mixed uses of land or
 buildings; high density of population and overcrowding; defective or in-
 adequate street layout; faulty lot layout in relation to size, adequacy, ac-
 cessibility or usefulness; excessive land coverage; insanitary or unsafe
 conditions; deterioration of site; diversity of ownership; tax or special
 assessment delinquency exceeding the fair value of the land; defective or
 unusual conditions of title; improper subdivision or obsolete platting; or
 the existence of conditions which endanger life or property by fire or
 other causes, or any combination of such factors, is conducive to ill health,
 transmission of disease, infant mortality, juvenile delinquency and crime;
 substantially impairs or arrests the sound growth of the city or its en-
 viron, retards the provision of housing accommodations or constitutes an

economic or social liability, and/or is detrimental, or constitutes a menace, to the public health, safety, welfare, and morals in its present condition and use.

(c) "Bonds" shall mean any bonds, notes, or debentures (including refunding obligations) herein authorized to be issued.

(d) "Clerk" shall mean the clerk or other official of the municipality who is the custodian of the official records of such municipality.

(e) "Federal government" shall include the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(f) "Local governing body" shall mean the council or other legislative body charged with governing the municipality.

(g) "Mayor" shall mean the chief executive of a city or town.

(h) "Municipality" shall mean any incorporated city or town in the state.

(i) "Obligee" shall include any bondholder, agent or trustees for any bondholders, or lessor demising to the municipality property used in connection with an urban renewal project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the municipality.

(j) "Person" shall mean any individual, firm, partnership, corporation, company, association, joint stock association, or school district; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(k) "Public body" shall mean the state or any municipality, township, board, commission, district, or any other subdivision or public body of the state.

(l) "Public officer" shall mean any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

(m) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.

(n) "Redevelopment" may include (1) acquisition of a blighted area or portion thereof; (2) demolition and removal of buildings and improvements; (3) installation, construction or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this act in accordance with the urban renewal plan, and (4) making the land available for development or redevelopment by private enterprise or public agencies (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with the urban renewal plan.

(o) "Rehabilitation" may include the restoration and renewal of a blighted area or portion thereof, in accordance with an urban renewal plan, by (1) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements; (2) acquisition

of real property and demolition or removal of buildings and improvements thereon where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, reduce traffic hazards, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities; (3) installation, construction or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this act; and (4) the disposition of any property acquired in such urban renewal area (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with such urban renewal plan.

(p) "Urban renewal area" means a blighted area which the local governing body designates as appropriate for an urban renewal project or projects.

(q) "Urban renewal plan" means a plan, as it exists from time to time, for an urban renewal project, which plan (1) shall conform to the comprehensive plan or parts thereof for the municipality as a whole; and (2) shall be sufficiently complete to indicate such land acquisition, demolition, and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(r) "Urban renewal project" may include undertakings or activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of blight, and may involve redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan.

History: En. Sec. 1, Ch. 195, L. 1959.

Title of Act

An act to provide for the rehabilitation, redevelopment, and clearance of blighted areas in cities and towns in this state in accordance with urban renewal plans approved by the governing bodies thereof; to define the duties, liabilities, exemptions and powers of such cities and towns in undertaking such activities, including the power to acquire property through the exercise of the power of eminent domain or otherwise, to dispose of property subject to any restrictions deemed necessary to prevent the development or spread of

future deteriorated or blighted areas, to issue revenue bonds and other obligations, to levy taxes and assessments and to enter into agreements to secure federal aid and comply with conditions imposed in connection therewith; to provide for an urban renewal agency and its powers hereunder if a city or town determines it to be in the public interest; to authorize public bodies to furnish funds, services, facilities and property in aid of urban renewal projects hereunder, and to provide that properties while held by a public agency hereunder shall be exempt from taxation.

11-3902. Findings and declarations of necessity. It is hereby found and declared that blighted areas which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state exist in municipalities of the state; that the existence of such areas contributes substantially and increasingly to the spread of

disease and crime and depreciation of property values, constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of such areas is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, are conducive to fires, are difficult to police and to provide police protection for, and, while contributing little to the tax income of the state and its municipalities, consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization and other forms of public protection, services, and facilities.

It is further found and declared that certain of such areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this act, since the prevailing condition of decay may make impracticable the reclamation of the area by rehabilitation; that other areas or portions thereof may, through the means provided in this act, be susceptible of rehabilitation in such a manner that the conditions and evils hereinbefore enumerated may be eliminated, remedied or prevented; and that to the extent feasible salvable blighted areas should be rehabilitated through voluntary action and the regulatory process.

It is further found and declared that the powers conferred by this act are for public uses and purposes for which public money may be expended and the power of eminent domain exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination.

History: En. Sec. 2, Ch. 195, L. 1959.

11-3903. Encouragement of private enterprise. A municipality, to the greatest extent it determines to be feasible in carrying out the provisions of this act, shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, to the rehabilitation or redevelopment of the urban renewal area by private enterprise. A municipality shall give consideration to this objective in exercising its powers under this act, including the formulation of a workable program, the approval of urban renewal plans (consistent with the comprehensive plan or parts thereof for the municipality), the exercise of its zoning powers, the enforcement of other laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements, the disposition of any property acquired, and the provision of necessary public improvements.

History: En. Sec. 3, Ch. 195, L. 1959.

11-3904. Workable program. A municipality for the purposes of this act may formulate a workable program for utilizing appropriate private and public resources to eliminate, and prevent the development or spread of, blighted areas, to encourage needed urban rehabilitation, to provide for the redevelopment of such areas, or to undertake such of the aforesaid activities, or other feasible municipal activities as may be suitably em-

ployed to achieve the objectives of such workable program. Such workable program may include, without limitation, provision for; the prevention of the spread of blight into areas of the municipality which are free from blight through diligent enforcement of housing, zoning, and occupancy controls and standards; the rehabilitation of blighted areas or portions thereof by replanning, removing congestion, providing parks, playgrounds and other public improvements, by encouraging voluntary rehabilitation and by compelling the repair and rehabilitation of deteriorated or deteriorating structures; and the clearance and redevelopment of blighted areas or portions thereof.

History: En. Sec. 4, Ch. 195, L. 1959.

11-3905. Finding of necessity by local governing body. No municipality shall exercise any of the powers hereafter conferred upon municipalities by this act until after its local governing body shall have adopted a resolution finding that: (1) one or more blighted areas exist in such municipality; and (2) the rehabilitation, redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of such municipality; and (3) that the proposed urban renewal project has been approved by the taxpayers of such municipality at an election as provided in section 6, subsection (g) [11-3906] thereof.

History: En. Sec. 5, Ch. 195, L. 1959.

11-3906. Preparation and approval of urban renewal projects and urban renewal plans. (a) A municipality shall not approve an urban renewal project for an urban renewal area unless the local governing body has, by resolution, determined such area to be a blighted area and designated such area as appropriate for an urban renewal project. The local governing body shall not approve an urban renewal plan until a comprehensive plan or parts of such plan for an area which would include an urban renewal area for the municipality have been prepared. For this purpose and other municipal purposes, authority is hereby vested in every municipality to prepare, to adopt, and to revise from time to time, a comprehensive plan or parts thereof for the physical development of the municipality as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related municipal planning activities, and to make available and to appropriate necessary funds therefor. A municipality shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal project plan in accordance with subsection (d) hereof.

(b) The municipality may itself prepare or cause to be prepared an urban renewal plan, or any person or agency, public or private, may submit such a plan to the municipality. Prior to its approval of an urban renewal project, the local governing body shall submit such plan to the planning commission of the municipality for review and recommendations as to its conformity with the comprehensive plan or parts thereof for the development of the municipality as a whole. The planning commission shall submit its written recommendations with respect to the proposed

urban renewal plan to the local governing body within sixty (60) days after receipt of it. Upon receipt of the recommendations of the planning commission, or if no recommendations are received within said sixty (60) days, then without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project plan prescribed by subsection (c) hereof.

(c) The local governing body shall hold a public hearing on an urban renewal plan after public notice thereof. Such notice shall be given by publication once each week for two consecutive weeks not less than ten (10) nor more than thirty (30) days prior to the date of the hearing in a newspaper having a general circulation in the urban renewal area of the municipality and by mailing a notice of such hearing not less than ten (10) days prior to the date of the hearing to the persons whose names appear on the county treasurer's tax roll as the owner or reputed owner of the property, at the address shown on the tax roll. The notice shall describe the time, date, place, and purpose of the hearing, shall generally identify the urban renewal area affected, and shall outline the general scope of the urban renewal plan under consideration.

(d) Following such hearing, the local governing body may approve an urban renewal project if it finds that (1) a workable and feasible plan exists for making available adequate housing for the persons who may be displaced by the project; (2) the urban renewal plan conforms to the comprehensive plan or parts thereof for the municipality as a whole; (3) the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise; and (4) that a sound and adequate financial program exists for the financing of said project.

Provided, that the local governing body must find the urban renewal project area to be blighted area as defined in section 1 (b) [11-3901] hereof.

(e) An urban renewal project plan may be modified at any time by the local governing body: Provided, that if modified after the lease or sale by the municipality of real property in the urban renewal project area, such modification shall be subject to such rights at law or in equity as a lessee or purchaser, or his successor or successors in interest may be entitled to assert.

(f) Upon the approval of an urban renewal project by a municipality, the provisions of the urban renewal plan with respect to the future use and building requirements applicable to the property covered by said plan shall be controlling with respect thereto.

(g) Upon the approval of an urban renewal project by a municipality the plan shall be submitted to a vote of the taxpayers of such municipality and shall be approved by a majority of those taxpayers voting in such election.

History: En. Sec. 6, Ch. 195, L. 1959.

11-3907. Powers. Every municipality shall have all the power necessary or convenient to carry out and effectuate the purposes and provisions

of this act, including the following powers in addition to others herein granted:

(a) To undertake and carry out urban renewal projects within the municipality, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this act, and to disseminate blight clearance and urban renewal information.

(b) To provide or to arrange or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets or roads in connection with an urban renewal project; to install, construct, and reconstruct, streets, utilities, parks, playgrounds, and other public improvements; and to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of an urban renewal project, and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate.

(c) Within the municipality, to enter upon any building or property in any urban renewal area, in order to make surveys and appraisals, provided that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain, or otherwise, any real property and such personal property as may be necessary for the administration of the provisions herein contained, together with any improvements thereon; to hold, improve, clear, or prepare for redevelopment any such property; to dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance; provided, however, that no statutory provision with respect to the acquisition, clearance, or disposition of property by public bodies shall restrict a municipality in the exercise of such functions with respect to an urban renewal project.

(d) To invest any urban renewal project funds held in reserves or sinking funds or any such funds which are not required for immediate disbursement, in property or securities in which mutual savings banks may legally invest funds subject to their control; to redeem such bonds as have been issued pursuant to section 10 [11-3910] of this act at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be cancelled.

(e) To borrow money and to apply for, and accept, advances, loans, grants, contributions and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this act, and to enter into and carry out contracts in connection therewith. A municipality may include in any application or contract for financial assistance with the

federal government for an urban renewal project such conditions imposed pursuant to federal laws as the municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of this act.

(f) Within the municipality, to make or have made all plans necessary to the carrying out of the purposes of this act and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify, and amend such plans. Such plans may include, without limitation: (1) a comprehensive plan or parts thereof for the locality as a whole, (2) urban renewal plans, (3) plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements, (4) plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements, and (5) appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects. The municipality is authorized to develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of urban blight and to apply for, accept, and utilize grants of, funds from the federal government for such purposes.

(g) To prepare plans for the relocation of families displaced from an urban renewal area, and to make relocation payments and to coordinate public and private agencies in such relocation, including requesting such assistance for this purpose as is available from other private and governmental agencies, both for the municipality and other parties.

(h) To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this act, and in accordance with state law; (1) levy taxes and assessments for such purposes; (2) acquire land by negotiation and/or eminent domain; (3) close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places; (4) plan or replan, zone or rezone any part of the municipality; (5) adopt annual budgets for the operation of an urban renewal agency, department, or offices vested with urban renewal project powers under section 15 [11-3915] of this act; (6) enter into agreements with such agencies or departments (which agreements may extend over any period) respecting action to be taken by such municipality pursuant to any of the powers granted by this act.

(i) Within the municipality, to organize, coordinate, and direct the administration of the provisions of this act as they apply to such municipality in order that the objective of remedying blighted areas and preventing the causes thereof within such municipality may be most effectively promoted and achieved, and to establish such new office or offices of the municipality or to reorganize existing offices in order to carry out such purpose most effectively.

(j) To exercise all or any part or combination of powers herein granted.

(k) Nothing in this act shall be construed to authorize any municipality to construct or operate, as a part of any urban renewal project, any electric generation plant, electric transmission or distribution lines or other public utility facilities excepting water and sewer lines then operated by municipalities.

History: En. Sec. 7, Ch. 195, L. 1959.

11-3908. Eminent domain. A municipality shall have the right to acquire by condemnation, any interest in real property, which it may deem necessary for an urban renewal project under this act after the adoption by the local governing body of a resolution declaring that the acquisition of the real property described therein is necessary for such purpose. Condemnation for urban renewal of blighted areas is declared to be a public use, and property already devoted to any other public use or acquired by the owner or his predecessor in interest by eminent domain may be condemned for the purposes of this act.

The award of compensation for real property taken for such a project shall not be increased by reason of any increase in the value of the real property caused by the assembly, clearance, or reconstruction, or proposed assembly, clearance, or reconstruction in the project area. No allowance shall be made for the improvements begun on real property after notice to the owner of such property of the institution of proceedings to condemn such property. Evidence shall be admissible bearing upon the insanitary, unsafe, or substandard condition of the premises, or the unlawful use thereof.

History: En. Sec. 8, Ch. 195, L. 1959.

11-3909. Disposal of property in urban renewal area. (a) A municipality may sell, lease, or otherwise transfer real property or any interest therein acquired by it for an urban renewal project, in an urban renewal area for residential, recreational, commercial, industrial, or other uses or for public use, and may enter into contracts with respect thereto, or may retain such property or interest only for parks and recreation, education, public transportation, public safety, health, highways, streets, and alleys, administrative buildings, or civic centers, in accordance with the urban renewal project plan, subject to such covenants, conditions, and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of blighted areas or otherwise to carry out the purposes of this act. Provided, that such sale, lease, other transfer, or retention, and any agreement relating thereto, may be made only after the approval of the urban renewal plan by the local governing body. The purchasers or lessees and their successors and assigns shall be obligated to devote such real property only to the uses specified in the urban renewal plan, and may be obligated to comply with such other requirements as the municipality may determine to be in the public interest, including the obligation to begin, within a reasonable time, any improvements on such real property required by the urban renewal plan. Such real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses

in accordance with the urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality shall take into account, and give consideration to, the uses provided in such plan; the restrictions upon, and the covenants, conditions, and obligations assumed by, the purchaser or lessee or by the municipality retaining the property; and the objectives of such plan for the prevention of the recurrence of blighted areas. The municipality in any instrument of conveyance to a private purchaser or lessee may provide that such purchaser or lessee shall be without power to sell, lease, or otherwise transfer the real property without the prior written consent of the municipality until he has completed the construction of any and all improvements which he has obligated himself to construct thereon. Real property acquired by a municipality which, in accordance with the provisions of the urban renewal plan, is to be transferred, shall be transferred as rapidly as feasible, in the public interest, consistent with the carrying out of the provisions of the urban renewal plan. The inclusion in any such contract or conveyance to a purchaser or lessee of any such covenants, restrictions, or conditions (including the incorporation by reference therein of the provisions of an urban renewal plan or any part thereof) shall not prevent the recording of such contract or conveyance in the land records of the clerk and recorder or the county in which such city or town is located, in such manner as to afford actual or constructive notice thereof.

(b) A municipality may dispose of real property in an urban renewal area to private persons only under such reasonable competitive bidding procedures as it shall prescribe or as hereinafter provided in this subsection. A municipality may, by public notice by publication once each week for three consecutive weeks in a newspaper having a general circulation in the community, prior to the execution of any contract or deed to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section, invite bids from, and make available all pertinent information to, private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area, or any part thereof. Such notice shall identify the area, or portion thereof and shall state that such further information as is available may be obtained at such office as shall be designated in said notice. The municipality shall consider all redevelopment or rehabilitation bids and the financial and legal ability of the persons making such bids to carry them out. The municipality may accept such bids as it deems to be in the public interest and in furtherance of the purposes of this act. Thereafter, the municipality may execute, in accordance with the provisions of subsection (a), and deliver contracts, deeds, leases, and other instruments of transfer.

(c) A municipality may operate and maintain real property acquired in an urban renewal area pending the disposition of the property for redevelopment, without regard to the provisions of subsection (a) above, for such uses and purposes as may be deemed desirable even though not in conformity with the urban renewal plan. Provided, however, that the

municipality may, after a public hearing, extend the time for a period not to exceed three years.

History: En. Sec. 9, Ch. 195, L. 1959.

11-3910. Issuance of bonds. (a) A municipality shall have the power to issue bonds from time to time in its discretion to finance the undertaking of any urban renewal project under this act, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans for urban renewal projects, and shall also have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. Such bonds shall not pledge the general credit of the municipality and shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from, or held in connection with, its undertaking and carrying out of urban renewal projects under this act; provided, however, that payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source, in aid of any urban renewal projects of the municipality under this act.

(b) Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall be subject only to the provisions of the Uniform Commercial Code. Bonds issued under the provisions of this act are declared to be issued for an essential public and governmental purpose, and, together with interest thereon and income therefrom, shall be exempted from all taxes. [Effective January 1, 1965.]

(c) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, not exceeding six per centum (6%) per annum, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto.

(d) Such bonds may be sold at not less than ninety-eight per cent (98%) of par at public or private sale, or may be exchanged for other bonds on the basis of par: Provided, that such bonds may be sold to the federal government at private sale at not less than par and, in the event less than all of the authorized principal amount of such bonds is sold to the federal government, the balance may be sold at public or private sale at not less than ninety-eight per cent (98%) of par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government.

(e) The municipality may annually pay into a fund to be established for the benefit of such bonds any and all excess of the taxes received

by it from the same property over and above the average of the annual taxes authorized without vote for a five-year period immediately preceding the acquisition of the property by the municipality for renewal purposes, such payment to continue until such time as all bonds payable from the fund are paid in full. Any other taxing unit in a municipality is authorized to allocate a like amount of such excess taxes to the municipality or municipalities in which it is situated.

(f) In case any of the public officials of the municipality whose signatures appear on any bonds or coupons issued under this act shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this act shall be fully negotiable.

(g) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this act or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the provisions of this act.

History: En. Sec. 10, Ch. 195, L. 1959;
amd. Sec. 11-109, Ch. 264, L. 1963.

Uniform Commercial Code" at the end of the first sentence of subsection (b) for "shall not be subject to the provisions of any other law or charter relating the authorization, issuance, or sale of bonds."

Amendment

The 1963 amendment substituted "shall be subject only to the provisions of the

11-3911. Bonds as legal investments. All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a municipality pursuant to this act: Provided, that such bonds and other obligations shall be secured by an agreement between the issuer and the federal government in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, prior to the maturity of such bonds or other obligations, moneys in an amount which (together with any other moneys irrevocably committed to the payment of interest on such bonds or other obligations) will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which moneys under the terms of said agreement are required to be used for the purpose of paying the principal of, and the interest on, such bonds or other obligations at their maturity. Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions, and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in

this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

History: En. Sec. 11, Ch. 195, L. 1959.

11-3912. Property exempt from taxes and from levy and sale by virtue of an execution. (a) All property of a municipality, including funds, owned or held by it for the purposes of this act, shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against a municipality be a charge or lien upon such property; provided, however, that the provisions of this section shall not apply to, or limit the right of, obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this act by a municipality on its rents, fees, grants, or revenues from urban renewal projects.

(b) The property of a municipality, acquired or held for the purposes of this act, is declared to be public property used for essential public and governmental purposes and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof: Provided, that such tax exemption shall terminate when the municipality sells, leases, or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body or other organization normally entitled to tax exemption with respect to such property.

History: En. Sec. 12, Ch. 195, L. 1959.

11-3913. Cooperation by public bodies. (a) For the purpose of aiding in, the planning, undertaking, or carrying out of an urban renewal project located within the area in which it is authorized to act, any public body authorized by law or by this act, may, upon such terms, with or without consideration, as it may determine: (1) dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or other rights or privileges therein to a municipality; (2) incur the entire expense of any public improvements made by such public body, in exercising the powers granted in this section; (3) do any and all things necessary to aid or cooperate in the planning or carrying out of an urban renewal plan; (4) lend, grant, or contribute funds to a municipality; (5) enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a municipality or other public body respecting action to be taken pursuant to any of the powers granted by this act, including the furnishing of funds or other assistance in connection with an urban renewal project, and (6) cause public buildings and public facilities, including parks, playgrounds, recreational, community, educational, water, sewer, or drainage facilities, or any other works which it is otherwise empowered to undertake to be furnished; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places; plan or replan, zone or rezone any part of the urban renewal area; and provide such administrative and other services as may be deemed requisite to the efficient exercise of the powers herein granted.

(b) Any sale, conveyance, lease, or agreement provided for in this section shall be made by a public body with appraisal, public notice, advertisement, or public bidding in accordance with provisions of section 9 (b) [11-3909].

(c) For the purpose of this section, or for the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project of a municipality, such municipality, in addition to any authority to issue bonds pursuant to section 10 [11-3910], may issue and sell its general obligation bonds. Any bonds issued pursuant to this section shall be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by such municipality for public purposes generally.

History: En. Sec. 13, Ch. 195, L. 1959.

11-3914. Title of purchaser. Any instrument executed by a municipality and purporting to convey any right, title, or interest in any property under this act, shall be conclusively presumed to have been executed in compliance with the provisions of this act insofar as title or other interest of any bona fide purchasers, lessees, or transferees of such property is concerned.

History: En. Sec. 14, Ch. 195, L. 1959.

11-3915. Exercise of powers in carrying out urban renewal project.

(a) A municipality may itself exercise its urban renewal project powers (as herein defined) or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the urban renewal agency (created by section 16 [11-3916]) or a department or other officers of the municipality as they are authorized to exercise under this act.

(b) In the event the local governing body makes such determination, such body may authorize the urban renewal agency or department or other officers of the municipality to exercise any of the following urban renewal project powers:

(1) To formulate and coordinate a workable program as specified in section 4 [11-3904].

(2) To prepare urban renewal plans.

(3) To prepare recommended modifications to an urban renewal project plan.

(4) To undertake and carry out urban renewal projects as required by the local governing body.

(5) To make and execute contracts as specified in section 7 [11-3907], with the exception of contracts for the purchase or sale of real or personal property.

(6) To disseminate blight clearance and urban renewal information.

(7) To exercise the powers prescribed by section 7 (b) [11-3907], except the power to agree to conditions for federal financial assistance and imposed pursuant to federal law relating to salaries and wages shall be reserved to the local governing body.

(8) To enter any building or property, in any urban renewal area, in order to make surveys and appraisals in the manner specified in section 7 (c) [11-3907].

(9) To improve, clear, or prepare for redevelopment any real or personal property in an urban renewal area.

(10) To insure real or personal property as provided in section 7 (c) [11-3907].

(11) To effectuate the plans provided for in section 7 (f) [11-3907].

(12) To prepare plans for the relocation of families displaced from an urban renewal area and to coordinate public and private agencies in such relocation.

(13) To prepare plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements.

(14) To conduct appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects.

(15) To negotiate for the acquisition of land.

(16) To study the closing, vacating, planning, or replanning of streets, roads, sidewalks, way, or other places and to make recommendations with respect thereto.

(17) To organize, coordinate, and direct the administration of the provisions of this act.

(18) To perform such duties as the local governing body may direct so as to make the necessary arrangements for the exercise of the powers and performance of the duties and responsibilities entrusted to the local governing body.

Any powers granted in this act that are not included in section 15 (b) [subsection (b) of this section] as powers of the urban renewal agency or a department or other officers of a municipality in lieu thereof, may only be exercised by the local governing body or other officers, boards, and commissions as provided under existing law.

History: En. Sec. 15, Ch. 195, L. 1959.

11-3916. Urban renewal agency. (a) When a municipality has made the finding prescribed in section 5 [11-3905] and has elected to have the urban renewal project powers, as specified in section 15 [11-3915], exercised, such urban renewal project powers may be assigned to a department or other officers of the municipality or to any existing public body corporate, or the legislative body of a city may create an urban renewal agency in such municipality to be known as a public body corporate to which such powers may be assigned.

(b) If the urban renewal agency is authorized to transact business and exercise powers hereunder, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency which shall consist of five commissioners. The initial membership shall consist of one commissioner appointed for one year, one for two years, one for three years, and two for four years; and each appointment thereafter shall be for four years.

(c) A commissioner shall receive no compensation for his services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

The powers and responsibilities of an urban renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers and responsibilities of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the by-laws shall require a larger number. Any persons may be appointed as commissioners if they reside within the municipality.

The urban renewal agency or department or officers exercising urban renewal project powers shall be staffed with the necessary technical experts and such other agents and employees, permanent and temporary, as it may require. An agency authorized to transact business and exercise powers under this act shall file, with the local governing body, on or before March 31 of each year, a report of its activities for the preceding calendar year, which report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expense as of the end of such calendar year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality and that the report is available for inspection during business hours in the office of the city clerk and in the office of the agency.

(d) For inefficiency, neglect of duty, or misconduct in office, a commissioner may be removed.

History: En. Sec. 16, Ch. 195, L. 1959.

11-3917. Prohibition against discrimination. For all of the purposes of this act, no person shall, because of race, creed, color, or national origin, be subjected to any discrimination.

History: En. Sec. 17, Ch. 195, L. 1959.

11-3918. Interested public officials, commissioners, or employees. No public official, or employee of a municipality or urban renewal agency or department or officers which have been vested by a municipality with urban renewal project powers and responsibilities under section 15 [11-3915], shall voluntarily acquire any interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project of such municipality, or in any contract or proposed contract in connection with such urban renewal project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body and such disclosure shall be entered upon the minutes of the governing body. If any such official, department or division head owns or controls, or owned or controlled within two years prior to the date of hearing on the urban

renewal project, any interest, direct or indirect, in any property which he knows is included in an urban renewal project, he shall immediately disclose this fact in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body, and any such official, department or division head shall not participate in any action on that particular project by the municipality or urban renewal agency, department, or officers which have been vested with urban renewal project powers by the municipality pursuant to the provisions of section 15 [11-3915]. A majority of the commissioners of an urban renewal agency exercising powers pursuant to this act shall not hold any other public office under the municipality other than their commissionership or office with respect to such urban renewal agency, department, or offices. Any violation of the provisions of this section shall constitute misconduct in office.

History: En. Sec. 18, Ch. 195, L. 1959.

11-3919. Separability—act controlling. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall be not affected thereby.

Insofar as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling. The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law.

History: En. Sec. 19, Ch. 195, L. 1959.

11-3920. Short title. This act shall be known and may be cited as the "Urban Renewal Law."

History: En. Sec. 20, Ch. 195, L. 1959.

CHAPTER 40—OPEN DITCHES

- Section 11-4001. Purpose of act.
- 11-4002. Unfenced, open ditch declared nuisance.
- 11-4003. Powers of governing body.
- 11-4004. Notice to close and fill ditch—publication.
- 11-4005. Notice of intent to provide for protective devices—period allowed for compliance.
- 11-4006. Commercial irrigation ditches exempt.

11-4001. Purpose of act. The legislative assembly declares that the control of ditch water in inhabited areas of Montana is affected with the public interest. The purpose of this act is to prevent drowning of children in ditches filled or partially filled with water within the limits of an incorporated city or town, if such ditches terminate within the limits of such city or town. This act shall be deemed an exercise of the police power of the state in and for the protection of the welfare, health, peace and safety of the people of Montana.

Nothing in this act shall be construed as intending to effectuate the abandonment of any valid water right. This act shall be construed merely

as a regulation in the public interest so that the diversion, transportation and use of water in such ditches in cities and towns shall be in a safe manner, as defined by this act.

History: En. Sec. 1, Ch. 63, L. 1961.

Title of Act

An act to permit an incorporated city or town to prevent the diversion or passage of water through the limits of such city or town in unfenced, open ditches that terminate in such city or town in order

to protect persons from drowning, except commercial irrigation ditches; permitting a city or town to declare such a ditch a public nuisance; permitting a city or town to have such an unfenced, open ditch enjoined as a public nuisance if corrective measures are not taken by interested parties.

11-4002. Unfenced, open ditch declared nuisance. Notwithstanding any provision contained in Title 89, Revised Codes of Montana, 1947, or any law pertaining to the use of water in Montana, it is hereby declared that water which flows through the limits of an incorporated city or town in an unfenced, open ditch that terminates within the limits of such city or town is a public nuisance, if such city or town declares it to be such nuisance, acting through its governing body.

History: En. Sec. 2, Ch. 63, L. 1961.

11-4003. Powers of governing body. The governing body of the city or town is hereby given the power:

(1) To investigate the dangerous condition of such ditches terminating within the corporate limits and to declare any such ditch a public nuisance, and

(2) To determine the measures necessary to remove the danger and public nuisance, including fencing, use of culvert or other protective device based upon standards to be determined by such city or town.

History: En. Sec. 3, Ch. 63, L. 1961.

11-4004. Notice to close and fill ditch—publication. When a public nuisance has been declared as provided in this act, the city or town shall give public notice for at least sixty (60) days to owners of the ditch and of any water rights affected that such ditch has been declared a public nuisance and that it shall be closed and filled unless the owners of such rights desire to keep the ditch open. Such notice shall include publication once each week in an established newspaper published within the city or town, if one exists, or in its absence in the official county newspaper for at least (8) successive weeks.

History: En. Sec. 4, Ch. 63, L. 1961.

11-4005. Notice of intent to provide for protective devices—period allowed for compliance. If a person claims that the water has not been abandoned and claims the right to use water in a ditch that the city or town has declared a public nuisance, he shall notify the city or town before the expiration of the sixty (60) day period that he wishes to continue the use of such water within the city or town and that he, individually or with others, will provide such protective devices as ordered by the city or town. If such notice is given, the person or persons claiming such right or rights shall have a period not to exceed six (6) months to remove the public nuisance in the manner ordered by the city or town.

If the city or town approves the work, it shall permit the water to flow into the city or town. If the protective device is not provided, or if it does not meet specifications required by the city or town, the city or town may designate such ditch abandoned and order it closed or filled when the six-month period ends.

History: En. Sec. 5, Ch. 63, L. 1961.

11-4006. Commercial irrigation ditches exempt. This act does not apply to ditches carrying water used for commercial irrigation purposes.

History: En. Sec. 6, Ch. 63, L. 1961.

REVISED CODES OF MONTANA

VOLUME 2 1963 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 2 OF THE
1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 2
THROUGH VOLUME 377, PACIFIC
REPORTER (2ND SERIES)

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For index see pocket supplement to Replacement Volume 9

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Burns v. Lacklen, 129 M 243, 284 P 2d 998, 1004.

References

Cited or applied in *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 32 (dissenting opinion).

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Operation and Effect

Common-law rules have been supplanted by statutory law in all fields covered by statute. *Simonson v. McDonald*, 131 M 494, 311 P 2d 982, 983.

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v. Industrial Accident Board, 132 M 77, 314 P 2d 866, 870.

References

Cited or applied in *Gaffney v. Industrial Accident Board*, 129 M 394, 287 P 2d

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12-339. Adoption of Replacement Volumes 3 and 4.

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the Revised Codes of Montana 1947 were approved, legalized and adopted by the legislature under this section, any defect or omission in the title of the 1937 law was thereby cured. *State v. Garcia*, 132 M 600, 319 P 2d 962, 963.

12-335. Adoption of Replacement Volumes 2 and 5 as prima facie laws of Montana—citation. Replacement Volumes Number 2 and Number 5 of the Revised Codes of Montana of 1947 as published by the publishers and distributors of said Revised Codes of Montana of 1947 are hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the titles and subjects covered thereby. The sections of said replacement volumes may be cited as sections of the Revised Codes of Montana of 1947 without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the Revised Codes of Montana of 1947 as included in the original compilation of the Revised Codes of Montana of 1947.

History: En. Sec. 1, Ch. 8, L. 1957.

Title of Act

An act to approve and legalize and adopt as prima facie the laws of Montana

the Replacement Volumes Number 2 and Number 5 of the Revised Codes of Montana of 1947, as published by the publishers and distributors of said codes.

12-336. Omissions — inaccuracies — effect. Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said replacement volumes and nothing herein contained shall affect the existence, validity, or enforcement of any act, enactment, or title thereof, statute, or code section, omitted from or erroneously, or incorrectly set forth in said replacement volumes.

History: En. Sec. 2, Ch. 8, L. 1957.

Effective Date

Section 3 of Ch. 8, Laws 1957 provided

the act should be in effect from and after its passage and approval. Approved February 9, 1957.

12-337. Adoption of Replacement Volumes 1 and 9. Replacement Volume Number 1 (in two parts) of the Revised Codes of Montana of

1947, as published by the publishers and distributors of said Revised Codes of Montana of 1947 is hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the titles and subjects covered thereby. The sections of said replacement volume may be cited as sections of the Revised Codes of Montana of 1947 without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the Revised Codes of Montana of 1947, as included in the original compilation of the Revised Codes of Montana of 1947. Replacement Volume Number 9 is hereby adopted as an official part of the Revised Codes of Montana of 1947 and as the general index to the said Revised Codes of Montana.

History: En. Sec. 1, Ch. 2, L. 1959.

Title of Act

An act to approve and legalize and adopt as prima facie the laws of Montana Replacement Volume Number 1 (in two

parts) and to adopt as official Replacement Volume Number 9 of the Revised Codes of Montana of 1947, as published by the publishers and distributors of said code; and providing an effective date.

12-338. Omissions — inaccuracies — effect. Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said replacement volumes and nothing herein contained shall affect the existence, validity, or enforcement of any act, enactment, or title thereof, statute, or code section, omitted from, or erroneously or incorrectly set forth in said replacement volumes.

History: En. Sec. 2, Ch. 2, L. 1959.

Effective Date

Section 3 of Ch. 2, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved January 28, 1959.

12-339. Adoption of Replacement Volumes 3 and 4. Replacement Volume Number 3 (in two parts) and Replacement Volume Number 4 (in two parts) of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said Revised Codes of Montana, 1947, are hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the titles and subjects covered thereby. The sections of said replacement volumes may be cited as sections of the Revised Codes of Montana, 1947 without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the Revised Codes of Montana, 1947, as included in the original compilation of the Revised Codes of Montana, 1947.

History: En. Sec. 1, Ch. 18, L. 1963.

Title of Act

An act to approve and legalize and adopt as prima facie the laws of Montana

Replacement Volume Number 3 (in two parts) and Replacement Volume Number 4 (in two parts) of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said codes.

12-340. Omissions — inaccuracies — effect. Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enact-

ment which is not included in said replacement volumes and nothing herein contained shall affect the existence, validity, or enforcement of any act, enactment, or title thereof, statute, or code section, omitted from, or erroneously, or incorrectly set forth in said replacement volumes.

History: En. Sec. 2, Ch. 18, L. 1963. its passage and approval. Approved January 29, 1963.

Effective Date

Section 3 of Ch. 18, Laws 1963 provided the act should be in effect from and after

TITLE 13—CONTRACTS

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CHAPTER 2—PARTIES TO CONTRACT

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Cross-Reference

Power of minor to borrow money for expenses of higher education, see section 64-106.1.

CHAPTER 3—CONSENT

13-308. (7480) **Actual fraud, acts constituting.**

Bad Faith

Where seller of land made representation that he had authority to sell his brother's land, which was adjoining, whereas in fact he did not have such authority, and where other evidence indicated that the seller made no effort to carry out other provisions of his contract

for sale, the district court was correct in finding him guilty of bad faith. *Hart v. Honrud*, 131 M 284, 309 P 2d 329, 332.

References

Holland Furnace Co. v. Rounds, 139 M 75, 360 P 2d 412.

13-311. (7483) **Undue influence—in what it consists.**

Relationship of Parties

In a will contest, where the jury found undue influence, trial judge did not abuse discretion in granting proponents a new trial on the question of influence which the jury found to exist with respect to proponents' mother, where the will was

executed without the knowledge of the beneficiaries, it was drafted by an attorney chosen by the testatrix, and testatrix did not change the will for twenty months before her death. *In re Cocanougher's Estate*, — M —, 375 P 2d 1009, 1014.

13-316. (7488) **Mutuality of consent.**

References

Cited in *Holmes v. Potts*, 132 M 477, 319 P 2d 232, 238.

13-318. (7490) **Mode of communicating acceptance of proposal.**

References

Cited or applied in *Aasheim v. Hoven*, 137 M 179, 350 P 2d 1025, 1026.

13-319. (7491) **When communication deemed complete.**

References

Cited or applied in *Aasheim v. Hoven*, 137 M 179, 350 P 2d 1025, 1026.

13-320. (7492) **Acceptance by performance of conditions.**

References

Cited or applied in *Aasheim v. Hoven*, 137 M 179, 350 P 2d 1025, 1026.

13-321. (7493) Acceptance must be absolute.**Insurance Contract**

Where a renewal policy was sent to an insured, the sending of policy constituted an offer and offer by insured to take the policy for as long as ten dollars would

pay the premium was a new proposal, requiring acceptance by the insurer. *Kudrna v. Great Northern Ins. Co.*, 175 F Supp 783.

13-322. (7494) Revocation of proposal.**Acceptance of Offer**

Where there was an agreement between an optionee and a prospective purchaser that "it will have to be first man up with the money" who could take up an option for the purchase of an interest in a block of real estate leases, and the prospective

purchaser notified the optionee that the money had been raised, the purchaser's action constituted an acceptance and the optionee could not then revoke the offer. *Aasheim v. Hoven*, 137 M 179, 350 P 2d 1025.

CHAPTER 4—OBJECT**13-404. (7501) When contract wholly void.****References**

Cited or applied in *Bennett v. Dodgson*, 129 M 228, 284 P 2d 990, 995.

CHAPTER 5—CONSIDERATION**13-501. (7503) Good consideration, what constitutes.****Property Agreement Made before Divorce**

An agreement, the purpose of which is to facilitate the granting of a divorce without proper grounds existing, is void; but

where proper grounds do exist, an agreement with respect to a property settlement cannot be said to perpetrate a fraud upon the court and will not be held void. *Schulz v. Fox*, 136 M 153, 345 P 2d 1045.

13-504. (7506) Effect of illegality.**References**

Cited or applied in *Benson v. School*

Dist. No. 1 of Silver Bow County, 136 M 77, 344 P 2d 117, 121.

13-511. (7513) Burden of proof to invalidate sufficient consideration.**Operation and Effect**

In an action by lessor to cancel an oil and gas lease where the requirement of a geological survey was a part of the

consideration, it was necessary for the lessor to plead and prove the requirement. *Braun v. Mon-O-Co. Oil Corp.*, 133 M 101, 320 P 2d 366, 369.

CHAPTER 6—CREATION OF CONTRACTS—ORAL AND WRITTEN

Section 13-606. What contracts must be in writing.

13-606. (7519) What contracts must be in writing. The following contracts are invalid, unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged, or his agent:

1. An agreement that by its terms is not to be performed within a year from the making thereof.
2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in section 30-105 of this code.
3. An agreement made upon consideration of marriage other than a mutual promise to marry.

4. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

5. An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission.

This section shall not apply to agreements subject to the Uniform Commercial Code. [Effective January 1, 1965.]

History: Subds. 1 to 3; en. Secs. 12 to 14, p. 494, Bannack Stat.; re-en. Secs. 12 to 14, pp. 393, 394, Cod. Stat. 1871; re-en. Secs. 166 to 168, 5th Div. Rev. Stat. 1879; re-en. Secs. 223 to 225, 5th Div. Comp. Stat. 1887; amd. Sec. 2185, Civ. C. 1895; re-en. Sec. 5017, Rev. C. 1907. Subd. 4; ap. p. Sec. 8, p. 493, Bannack Stat.; re-en. Sec. 8, p. 393, Cod. Stat. 1871; re-en. Sec. 162, 5th Div. Rev. Stat. 1879; re-en. Sec. 219, 5th Div. Comp. Stat. 1887; amd. Sec. 2185, Civ. C. 1895; re-en. Sec. 5017, Rev. C. 1907. Subd. 5; en. Sec. 2185, Civ. C. 1895; re-en. Sec. 5017, Rev. C. 1907; all subdivisions re-en. Sec. 7519, R. C. M. 1921; amd. Sec. 11-110, Ch. 264, L. 1963. Cal. Civ. C. Sec. 1624.

Amendment

The 1963 amendment deleted former paragraph 4, for text of which see parent volume; renumbered former paragraphs 5 and 6 as 4 and 5; and added the final paragraph.

Subd. 4

Oral Lease

An oral lease for more than a year is invalid, and evidence of the agreement and secondary evidence of its contents cannot be introduced. *Roseneau Foods, Inc. v. Coleman*, — M —, 374 P 2d 87, 89.

A one year oral lease under section 42-203 is not within the statute of frauds, and a continuous renewal thereof under section 42-205 would also not be within the statute. *Roseneau Foods, Inc. v. Coleman*, — M —, 374 P 2d 87, 90.

Under section 42-203 it is possible to have an oral lease for at least one year without an expression as to time therein. *Roseneau Foods, Inc. v. Coleman*, — M —, 374 P 2d 87, 89.

Statute of frauds has no application to executed portion of oral lease. *Roseneau*

Foods, Inc. v. Coleman, — M —, 374 P 2d 87, 90.

Rights-of-Way of Necessity

There are no implied grants or reservations of rights-of-way of necessity in Montana. *Simonson v. McDonald*, 131 M 494, 311 P 2d 982, 984.

Sale of Ranch

In action for specific performance of contract for purchase of ranch of defendants, writings were sufficient to take the case out of the statute of frauds where instrument giving broker exclusive right for 30 days to sell ranch for \$30,000, provided that defendants were to pay broker a \$1,000 commission, recited that terms of sale were cash to defendants, possession should be taken by purchaser on named date and that defendants, who retained a 5% royalty, agreed to pay 1953 taxes and transfer all lease land to purchaser, who accepted unqualifiedly in writing accompanied by check as down payment. *Ward v. Mattuschek*, 134 M 307, 330 P 2d 971.

Sufficiency of Memorandum

The note or memorandum necessary to meet the requirements of this section may consist of several writings, and it is sufficient if it contains all the essentials of the contract, although they are stated in general terms. *Hughes v. Melby*, 135 M 415, 340 P 2d 511.

The fact that the memorandum required by this section does not specify when the deed shall be furnished does not defeat the sufficiency of such memorandum because section 13-723 implies that it must be furnished within a reasonable time after the other party performs. *Hughes v. Melby*, 135 M 415, 340 P 2d 511.

CHAPTER 7—INTERPRETATION OF CONTRACTS

13-701. (7526) Uniformity of interpretation.

Operation and Effect

Where a deed of land contained a clause, following the description of the

land, which said "including one-half of all oil and gas rights owned by the parties," it must be considered that it was

the intention of the parties to exclude from the deed the other one-half interest in the oil and gas and that such one-half

remained with the grantor. *Wyrick v. Hoefle*, 136 M 172, 346 P 2d 563.

13-702. (7527) Contracts—how to be interpreted.

References

Cited or applied in *Barovich v. City of Miles City*, 135 M 394, 340 P 2d 819;

Guidici v. Minerals Engineering Co., 136 M 389, 348 P 2d 354, 361.

13-703. (7528) Intention of parties—how ascertained.

References

Peerless Casualty Co. v. Mountain States Mutual Casualty Co., 283 F 2d 268, 278.

13-704. (7529) Intention to be ascertained from language.

Crop-share Agreement

Where contract provided that farm laborer would be paid \$150 per month cash, would get 10% of the harvested crops after harvest, and would be expected to stay for a twelve-month period, he was entitled to his share of the crop due on his crop-share agreement when wheat and barley were placed in storage at elevator although safflower, in which laborer did not share, had not been cut. Failure of employer to pay laborer's share on demand constituted a breach of contract and

it was not necessary for laborer to complete the twelve-month term in order to recover his percentage of the crops. *Laughnan v. Sorenson*, 139 M 531, 366 P 2d 433, 434.

References

Cited or applied in *James v. Prudential Ins. Co. of America*, 131 M 473, 312 P 2d 125, 127; *Peerless Casualty Co. v. Mountain States Mutual Casualty Co.*, 283 F 2d 268, 278.

13-705. (7530) Interpretation of written contracts.

Operation and Effect

Parol evidence which tended to vary or alter the terms of a written chattel mortgage will be disregarded where the chattel mortgage was plain and unambiguous and needed no construction. *First Nat. Bank of Plains v. Green Mt. Soil Conservation District*, 130 M 1, 293 P 2d 289.

Reinsurance Contract

Where amended agreement between automobile insurer and reinsurer was the

same as that contained in prior agreement, which the parties had interpreted as contended for by the insurer, findings that agreement was ambiguous, and that the parties did not intend to give the words in the amendment a different meaning than that given in the agreement, being supported by substantial evidence, warranted judgment in favor of insurer. *Peerless Casualty Co. v. Mountain States Mutual Casualty Co.*, 283 F 2d 268, 276.

13-706. (7531) Writing—when disregarded.

Extrinsic Evidence

Where defendant charged with grand larceny by bailee did not deny that he received a check from the complaining witness, but his defense was that it was a loan instead of a payment for an automobile, evidence as to whether the check was a loan or payment for the automobile was admissible over objection that it permitted a witness to vary a written

instrument by parol testimony. *State v. Ahl*, — M —, 371 P 2d 7, 9.

Operation and Effect

This statute does not preclude the trial court from reforming an instrument which by reason of mistake or fraud fails to set forth the correct contentions of the parties. *Carroll v. Funk*, 222 F 2d 508, 511.

13-707. (7532) Effect to be given to every part of contract.

Construction of Deeds

Where a deed of land contained a clause, following the description of the land, which said "including one-half of all oil and gas rights owned by the parties," it must be considered that it was the inten-

tion of the parties to exclude from the deed the other one-half interest in the oil and gas and that such one-half remained with the grantor. *Wyrick v. Hoefle*, 136 M 172, 346 P 2d 563.

A quitclaim deed and assignment of contract for deed may be construed as security for the payment of a promissory note. *Kraus v. Newman*, 137 M 388, 352 P 2d 261, 262.

Lease With Option to Buy

Plaintiff's option to buy was exclusive and not conditioned upon defendants' decision to sell where instrument did not use the term "first option to buy" and the entire language of the agreement showed that plaintiff was given an exclusive option to buy the property described under the lease; that his method of exercising his option was by tendering \$1,500 to the defendant, as called for by "Plan No. 2." *Steen v. Rustad*, 132 M 96, 313 P 2d 1014, 1018.

Operation and Effect

A court, in interpreting a written instrument, will not isolate certain phrases

of that instrument in order to garner the intent of the parties, but will grasp the instrument by its four corners and in the light of the entire instrument, ascertain the paramount and guiding intention of the parties. *Steen v. Rustad*, 132 M 96, 313 P 2d 1014, 1018.

Mere isolated tracts, clauses and words will not be allowed to prevail over the general language utilized in the instrument. *Steen v. Rustad*, 132 M 96, 313 P 2d 1014, 1018.

References

Cited or applied in *Davis v. Burton*, 128 M 434, 278 P 2d 213, 218; *James v. Prudential Ins. Co. of America*, 131 M 473, 312 P 2d 125, 127; *Guidici v. Minerals Engineering Co.*, 136 M 389, 348 P 2d 354, 361; *Peerless Casualty Co. v. Mountain States Mutual Casualty Co.*, 283 F 2d 268, 277.

13-708. (7533) Several contracts—when taken together.

Property Settlement

Agreements as to disposition of property between estranged husband and wife, which were obviously to become operative in the future when a divorce proceeding was instituted, with condition that resistance to divorce would render the property settlement nugatory, when construed together, facilitated divorce and were void as a violation of public policy. *Western Life Ins. Co. v. Bower*, 153 F Supp 25, 30.

Provision of property settlement agreement under which husband relinquished

right to change beneficiary of life insurance policy, was severable from provisions facilitating divorce, and was enforceable, where wife presumably released certain property rights in consideration therefor. *Western Life Ins. Co. v. Bower*, 153 F Supp 25.

References

Cited or applied in *Fey v. A. A. Oil Corporation*, 129 M 300, 285 P 2d 578, 583; *Cottrell v. Weinheimer*, 137 M 347, 351 P 2d 543, 547.

13-709. (7534) Interpretation in favor of contract.

References

Cited or applied in *Guidici v. Minerals Engineering Co.*, 136 M 389, 348 P 2d 354,

361; *Peerless Casualty Co. v. Mountain States Mutual Casualty Co.*, 283 F 2d 268, 277.

13-710. (7535) Words to be understood in usual sense.

References

Cited or applied in *James v. Prudential Ins. Co. of America*, 131 M 473, 312 P 2d

125, 127; *Peerless Casualty Co. v. Mountain States Mutual Casualty Co.*, 283 F 2d 268, 278.

13-714. (7539) Contract restricted to its evident object.

References

Peerless Casualty Co. v. Mountain States Mutual Casualty Co., 283 F 2d 268, 277.

13-715. (7540) Interpretation in sense in which promisor believed, etc.

Reservation of Mineral Interest

In action for specific performance arising over interpretation of contract for conveyance of land reserving mineral interest, where cross complaint of defendants alleged that the contract was ambiguous and uncertain and prayed for a

declaratory judgment to adjudicate the rights of the parties, it was the duty of the trial court to determine the intent of the parties and the exclusion of parol evidence of intent was error. *Stokes v. Tutvet*, 134 M 250, 328 P 2d 1096, 1103, 1104.

13-716. (7541) Particular clauses subordinate to general intent.**References**

Peerless Casualty Co. v. Mountain States Mutual Casualty Co., 283 F 2d 268, 278.

13-718. (7543) Repugnancies—how reconciled.**References**

Cited or applied in Wyrick v. Hoefle, 136 M 172, 346 P 2d 563.

13-719. (7544) Inconsistent words rejected.**References**

Peerless Casualty Co. v. Mountain States Mutual Casualty Co., 283 F 2d 268, 278.

13-720. (7545) Words to be taken most strongly against whom.**Acceptance of Agreement**

Defendants' demurrer was properly sustained in action on a written contract where complaint did not allege a written acceptance by the plaintiff and the agreement was to be effective only when it was accepted and when defendants were notified by letter of plaintiff's acceptance. Union Interchange, Inc. v. Allen, — M —, 370 P 2d 492, 496.

Insurance Policies

Even though an insurance contract is to be construed liberally in favor of the insured and strictly against the insurer, contracts of insurance should be given a fair and reasonable construction. James

v. Prudential Ins. Co. of America, 131 M 473, 312 P 2d 125, 127.

Sale Agreement

If any uncertainty exists in the sale agreement and the deeds, it must be construed most strongly against the person causing the uncertainty. This was true in the case of a realtor, scrivener, who in turn was vendor's agent. Voyta v. Clonts, 134 M 156, 328 P 2d 655, 661.

References

Cited or applied in Guidici v. Minerals Engineering Co., 136 M 389, 348 P 2d 354, 362.

13-723. (7548) Time of performance of contract.**Crop-share Agreement**

Where contract provided that farm laborer would be paid \$150 per month cash, would get 10% of the harvested crops after harvest, and would be expected to stay for a twelve-month period, he was entitled to his share of the crop due on his crop-share agreement when wheat and barley were placed in storage at elevator although safflower, in which laborer did not share, had not been cut. Failure of employer to pay laborer's share on demand constituted a breach of contract and it was not necessary for laborer to complete the twelve-month term in order

to recover his percentage of the crops. Laughnan v. Sorenson, 139 M 531, 366 P 2d 433, 434.

Operation and Effect

That no definite time was stipulated for performance by the purchaser of the payment of money is immaterial for our law implies an agreement here to perform within a reasonable time. Bennett v. Dodgson, 129 M 228, 284 P 2d 990, 994.

References

Cited or applied in Hughes v. Melby, 135 M 415, 340 P 2d 511.

13-724. (7549) Time—when of essence.**Omission of Statement**

Where a lease with option to purchase does not state that time is of the essence, failure of the optionee to perform the covenants strictly at the time they may

or should be performed will not cause him to lose his right to specific performance of the option. Continental Oil Co. v. McNair Realty Co., 137 M 410, 353 P 2d 100, 109.

13-727. (7552) Executed and executory contracts defined.**References**

Cited in Dalakow v. Geery, 132 M 457, 318 P 2d 253, 256.

CHAPTER 8—UNLAWFUL CONTRACTS

13-801. (7553) What is unlawful.

Operation and Effect

A resolution of the board of county commissioners which extinguished the assessed tax of a taxpayer was void as such boards have no power, authority or jurisdiction under the constitution nor statutes to reduce, compromise, remit, release, cancel, diminish or extinguish any state tax, obligation or liability, nor any assessed tax valuation or percentage assignments of property after the same has been found, determined and fixed by the state board of equalization. Likewise, the direction

of the board directing the county attorney to stipulate with the attorneys for the taxpayer, to request the court to enter judgment against the county and state was and is wholly void and of no legality whatever. Such void act, understanding and agreement by public officials, void in its inception, is not validated by performance and remains a void act or agreement under the public policy established by the legislature. *Carlson v. Flathead County*, 130 M 36, 293 P 2d 279, 284. (Dissenting opinion, 130 M 36, 293 P 2d 279, 286.)

13-802. (7554) Certain contracts unlawful.

Specific Indemnity Clause in Lease

A specific indemnity clause in a lease agreement between a railroad and a lessee which provided that the lessee would indemnify the railroad for claims, "whether due or not due to the negligence" of the railroad, was not invalid as applied to the allegations in a complaint by a person seeking recovery from the railroad for

injuries allegedly received because of a violation by the railroad of section 72-219, making it a misdemeanor for a railroad to permit a locomotive to approach a crossing without giving a proper warning. *Ryan Mercantile Co. v. Great Northern Ry. Co.*, 186 F Supp 660, affirmed in 294 F 2d 629.

13-806. (7558) Restraints upon legal proceedings.

Agreement as to Venue

This statute is not violated by a stipulation regarding venue of an action brought against one in a county where he agreed it might be brought. *Electrical Products Consolidated v. Bodell*, 132 M 243, 316 P 2d 788, 790, 69 ALR 2d 1318.

Arbitration Provision

In view of this section, submission of a controversy to arbitration is not required as a condition precedent to bringing action, even though the contract contains a clause requiring arbitration. *Green v. Wolff*, — M —, 372 P 2d 427, 433.

CHAPTER 9—EXTINCTION OF CONTRACTS—RESCISSION—ALTERATION—CANCELLATION

13-903. (7565) When party may rescind.

Failure of Consideration

Chattel mortgages given for the purchase of an automobile were without consideration where vendor failed to register transfer under section 53-109 which was necessary to pass title to the buyer. *Sonnek v. Universal C. I. T. Credit Corp.*, — M —, 374 P 2d 105, 108.

v. Universal C. I. T. Credit Corp., — M —, 374 P 2d 105, 108.

Oral Cancellation

A written contract may be canceled by mutual consent, and such cancellation may be oral. *West River Equipment Co. v. Holzworth Constr. Co.*, 134 M 582, 335 P 2d 298.

Fraud

The purchaser of an automobile was entitled to rescind chattel mortgages given for purchase of the car where it was misrepresented by the seller and the assignee of the chattel mortgages failed to pass title to the buyer. *Sonnek*

Written Cancellation

If the prior written contract effected a change in ownership of goods, an agreement to rescind must be in writing to comply with the statute of frauds. *West River Equipment Co. v. Holzworth Constr. Co.*, 134 M 582, 335 P 2d 298.

13-907. (7569) Written contracts—how modified.

Acceleration Agreement

Plaintiff, subcontractor, a bridge construction specialist, under road construc-

tion project, was entitled to part of acceleration payment under prime contract pursuant to agreement, where written

contract was orally modified to provide for acceleration of certain items of work by plaintiff and for payment of additional sums to him; there was consideration for the modification; and such work was performed by plaintiff. *Dalakow v. Geery*, 132 M 457, 318 P 2d 253, 256.

Exception to Establish Fraud

In an action by the payees against the makers for the balance due on a renewal note, where there was fraud and partial failure of consideration and one of the makers testified that he did not know how to figure interest, the makers were not precluded from showing that the contract was different from what the writing showed it to be. *Jensen v. Franklin*, 135 M 341, 340 P 2d 832.

Operation and Effect

Parol evidence which tended to vary or alter the terms of a written chattel mortgage will be disregarded, where the chattel mortgage was plain and unambiguous and needed no construction. *First Nat. Bank of Plains v. Green Mt. Soil Conservation District*, 130 M 1, 293 P 2d 289.

Oral Testimony Inadmissible

Trial court could have excluded evidence relating to a joint venture, none of which was in writing, as being designed to alter or vary the terms of a written agreement contrary to this section and section 93-401-13. *Barrett v. Morton*, 137 M 190, 351 P 2d 601, 605.

Prior Oral Contract

Evidence of an oral contract by the plaintiffs to build an addition to defendant's service station at no extra cost was inadmissible where a subsequent written contract for such construction was executed a month later. *Leigland v. McGaffick*, 135 M 188, 338 P 2d 1037.

Waiver of Notice

A requirement of written notice may be waived by parol, and a waiver of notice may be express or may be inferred from the conduct of the parties. *Flint v. Mincoff*, 137 M 549, 353 P 2d 340, 342.

References

Cited in *West River Equipment Co. v. Holzworth Constr. Co.*, 134 M 582, 335 P 2d 298, 302.

TITLE 14—COOPERATIVES

- Chapter 1. Credit unions, 14-130 to 14-158.
2. Cooperative associations, 14-201, 14-204.
4. Cooperative marketing act, 14-422.
5. Rural Electric and Telephone Cooperative Act, 14-501 to 14-504, 14-508, 14-510, 14-516, 14-527, 14-528, 14-530.

CHAPTER 1—CREDIT UNIONS

- Section 14-130. Short title.
14-131. Definitions.
14-132. Reports, examinations and fees.
14-133. Incorporation.
14-134. Certified copy of articles of incorporation as evidence.
14-135. Evidence of corporate character.
14-136. By-laws.
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14-154. Change in place of business.
14-155. Disposal of fees—fees for filing and recording articles of incorporation.
14-156. Conversion from state to federal credit union and from federal to state credit union.
14-157. Application of act.
14-158. Saving clause.

14-101 to 14-129. (6109.12 to 6109.39) Repealed.

Repeal

These sections (Secs. 1 to 28, Ch. 105, L. 1929; Sec. 1, Ch. 136, L. 1955; Sec. 1, Ch. 151, L. 1955; Sec. 1, Ch. 187, L. 1955;

Sec. 1, Ch. 115, L. 1959; Sec. 1, Ch. 142, L. 1959; Sec. 1, Ch. 117, L. 1961), relating to credit unions, were repealed by Sec. 30, Ch. 236, Laws 1963.

14-130. Short title. This act may be cited as the "Montana Credit Union Act."

History: En. Sec. 1, Ch. 236, L. 1963.

Title of Act

An act relating to credit unions; creating new sections to provide a comprehensive revision and consolidation of the laws of the state of Montana relating to credit

unions; regulating the incorporation, formation, operation and supervision of the affairs of credit unions; providing a saving clause; and repealing title 14, chapter 1, Revised Codes of Montana, 1947, as amended, and all other acts and parts of acts in conflict herewith.

14-131. Definitions. As used in this act. (1) The term "credit union" means a cooperative association organized in accordance with the provisions of this act for the purpose of promoting thrift among its members

and creating a source of credit for provident or productive purposes. Such organizations shall have perpetual succession and shall be organized under and governed solely by the provisions of this act;

(2) The term "department" means the department of banking, state of Montana; and

(3) The term "supervisor" means the state examiner, ex officio superintendent of banks, state of Montana.

History: En. Sec. 2, Ch. 236, L. 1963.

14-132. Reports, examinations and fees. Credit unions shall be under the supervision of the supervisor and shall make financial reports to him as and when he may require, but at least semiannually. Each credit union shall be subject to a regular examination annually by, and for this purpose shall make its books and records accessible to, any person designated by the supervisor; except that special examinations may be made more frequently where there is clear and incontrovertible evidence of immediate danger or damage to, or impairment of members' shareholdings. Fees assessed for examinations shall not exceed the following schedule: The first \$25,000 of assets to be assessed at \$.22 per \$100 of assets, the next \$75,000 of assets to be assessed at \$.20 per \$100 of assets, the next \$100,000 of assets to be assessed at \$.18 per \$100 of assets, the next \$300,000 of assets to be assessed at \$.14 per \$100 of assets, the next \$500,000 of assets to be assessed at \$.10 per \$100 of assets, and assets in excess of \$1,000,000 shall be assessed at \$.03 per \$100 of assets. The minimum fee chargeable shall be \$17.

History: En. Sec. 3, Ch. 236, L. 1963.

14-133. Incorporation. Whenever any number of persons not less than seven (7) who are domiciled in this state shall desire to incorporate a credit union having for its object the conduct and operation of such organization as defined in this act, they shall prepare and file articles of incorporation to that effect in the manner in this act specified; such articles shall be signed, sealed, and acknowledged in the form now provided by the statutes of this state for the conveyance of real estate and shall include the following:

(1) The name, which shall not be the same or too closely resembling that in use by any existing corporation established under the laws of the state. The words "credit union" shall form a part of the name and no person, corporation, copartnership, association, or other form of organization shall be entitled to use a name employing said combination of words except as provided in section 8 [14-137] of this act.

(2) The principal office, or place of business which shall be within this state.

(3) The term of existence of the organization, which shall be perpetual.

(4) The par value of shares of the credit union, which shall be five dollars (\$5) each.

(5) A provision that such credit union shall be organized under this act for the purposes set forth therein.

(6) The names, occupations and addresses of the subscribers to the articles of incorporation and the number of shares subscribed by each.

The articles of incorporation shall be presented to the supervisor with the by-laws of the proposed credit union, and he shall within thirty (30) days of the receipt of said articles of incorporation and by-laws, determine whether they conform with the provisions of this act, and whether or not the organization of the credit union would benefit its members and be consistent with the purposes of this act. Thereupon, the supervisor shall promptly notify the applicant of his decision. If it is favorable, the supervisor shall, at the time of issuing such notice, attach his written approval to the articles of incorporation. If it is unfavorable, the supervisor shall, at the time of issuing such notice, state his reasons therefor.

Said articles of incorporation shall then be filed with the secretary of state who, upon payment of the filing fees therefor, shall issue a certificate of incorporation over the great seal of the state of Montana; and a copy thereof, certified by the secretary of state, shall be filed in the office of the county clerk of the county in which the principal place of business of the credit union is located.

History: En. Sec. 4, Ch. 236, L. 1963.

14-134. Certified copy of articles of incorporation as evidence. A certified copy of articles of incorporation and certificate of merger, filed in pursuance to this act shall be received in all courts and other places as prima facie evidence of the facts therein stated.

History: En. Sec. 5, Ch. 236, L. 1963.

14-135. Evidence of corporate character. The certificate issued by the secretary of state in pursuance of this act setting forth that the credit union has fully complied with the provisions of this act and is lawfully authorized to transact business in this state shall be admitted in all courts of this state, and shall be prima facie evidence of the corporate character and capacity of such credit union, and of its right to transact business in this state excepting in an action prosecuted by the state in the nature of quo warranto.

History: En. Sec. 6, Ch. 236, L. 1963.

14-136. By-laws. In order to simplify the organization of credit unions the supervisor shall from time to time cause to be prepared a form of articles of incorporation and a form of by-laws, consistent with this act, which shall be used by credit union incorporators, and shall be supplied to them on request. At the time of presenting the articles of incorporation the incorporators shall also submit proposed by-laws to the supervisor for his approval.

The by-laws may be amended in the manner provided therein, except that no amendments thereto shall thereafter become operative until they have been approved by the supervisor.

History: En. Sec. 7, Ch. 236, L. 1963.

14-137. Restriction on use of words "credit union" in name. Any person, corporation, copartnership, or association, except corporations doing

business as credit unions, or a credit union organized under the provisions of this act, or under the Federal Credit Union Act or except a central organization of credit unions to which all the credit unions in this state shall be eligible and except chapters of credit unions to which all the credit unions in given areas shall be eligible, using a name or title containing the words "credit union" or any derivation thereof or representing themselves in their advertising or otherwise, as conducting business as a credit union, shall be fined no more than five hundred dollars (\$500) or imprisoned no more than one year or both; and shall be enjoined from using such words in its name.

History: En. Sec. 8, Ch. 236, L. 1963.

14-138. Powers. A credit union shall have perpetual succession in its corporate name during its existence and shall have power:

- (1) to make contracts;
- (2) to sue and be sued;
- (3) to adopt and use a common seal and alter the same at pleasure;
- (4) to receive the savings of its members as payment on shares (including the right to conduct Christmas clubs, vacation clubs, and other such thrift organizations within the membership);
- (5) to make loans to members for provident or productive purposes;
- (6) to make loans to a cooperative society or other organization having membership in the credit union;
- (7) to deposit its funds in state and national banks the accounts of which are insured by the Federal Deposit Insurance Corporation;
- (8) to an extent which shall not exceed twenty-five per centum (25%) of its members' shareholdings, invest in the paid-up shares of building and loan associations the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, or in loans to and shares of other credit unions, or organizations of credit unions, or in any investment legal for savings banks or for trust funds in the state;
- (9) to borrow money as hereinafter indicated;
- (10) to own, hold, and dispose of real and personal property only as may be necessary or incidental to its operations;
- (11) to issue shares in the name of a minor in such a manner as the by-laws may provide;
- (12) to purchase insurance on the lives of its members in an amount equal to their respective share and loan balances or either or all of them;
- (13) to assess charges to members in accordance with the by-laws for failure to meet promptly their obligations to the credit union;
- (14) to impress a lien upon the shares, dividends and accumulation of any member to the extent of any loans made to him directly or indirectly, or on which he is co-maker and for any dues or fines payable by him [; and].

History: En. Sec. 9, Ch. 236, L. 1963.

of the section to indicate apparent superfluity.

Compiler's Note

The compiler has inserted brackets around the semicolon and word at the end

14-139. Membership. Credit union membership shall consist of the incorporators and such other persons as may be elected to membership and subscribe to at least one share, pay an initial installment thereon and any such entrance fee as may be provided for in the by-laws. Organizations (incorporated or otherwise) composed for the most part of the same general group as the credit union membership may be members. Credit union membership shall be limited to groups having a common bond of occupation or association. Shares may be issued in joint tenancy with right of survivorship with any persons designated by the credit union member, but no joint tenant shall be permitted to vote, obtain loans, or hold office, unless he is within the field of membership and is a qualified member.

History: En. Sec. 10, Ch. 236, L. 1963.

14-140. Membership meetings. The fiscal year of all credit unions shall end December 31. The regular annual and special meetings may be held in the manner indicated in the by-laws. At all meetings a member shall have but a single vote whatever his shareholdings. No member shall be entitled to vote by proxy, but a member other than a natural person may vote through an agent designated for the purpose.

History: En. Sec. 11, Ch. 236, L. 1963.

14-141. Management. The business affairs of a credit union shall be managed by a board of not less than five (5) directors, and a credit committee of not less than three (3) members, all to be elected at the annual members' meeting by and from the members, and by a supervisory committee of three (3) members, one (1) of whom may be a director other than the treasurer. Two (2) members of the supervisory committee shall be elected at the annual members' meeting by and from the members and one (1) member shall be appointed by the board. Any vacancy occurring in the supervisory committee shall be filled by appointment by the board, until successors (in the case of the elected members) elected at the next annual meeting have qualified. All members of the board and of such committees shall hold office for such terms, respectively, as the by-laws may provide; provided that the said terms shall be for not less than one (1) nor more than three (3) years, except that the term of the board's appointee to the supervisory committee shall be for one (1) year. A record of the names and addresses of the members of the board and such committees and of the officers of the credit union shall be filed with the department within ten (10) days after their election or appointment. No member of the board or of either such committee shall, as such, be compensated.

History: En. Sec. 12, Ch. 236, L. 1963.

14-142. Officers. At their first meeting after the annual meeting of the members, the directors shall elect a president, one or more vice presidents, a secretary, and a treasurer, who shall be the executive officers of the credit union. The offices of secretary and treasurer may be held by the same person. All executive officers shall be chosen from among the elected directors except that the secretary-treasurer or treasurer (depending on

whether or not these offices are combined) may be appointed by the directors from outside the membership of the board of directors, in which case such office shall be designated as an executive office and the person holding such office shall be a member of the board, ex officio, without vote. The duties of the officers shall be as determined by the by-laws, except that the treasurer shall be the general manager of the credit union. Before the treasurer shall enter upon his duties he shall give bond with good and sufficient surety, in an amount and character to be determined by the board of directors in compliance with regulations prescribed from time to time by the supervisor, conditioned upon the faithful performance of his trust.

History: En. Sec. 13, Ch. 236, L. 1963.

14-143. Directors. The board of directors shall meet at least once a month and shall have the general direction and control of the affairs of the credit union. Minutes of all such meetings shall be kept. Among other things they shall act upon applications for membership; require any officer or employee having custody of or handling funds to give bond with good and sufficient surety in an amount and character to be determined by the board of directors in compliance with regulations prescribed from time to time by the supervisor, and authorize the payment of the premium or premiums therefor from the funds of the credit union; fill vacancies in the board and in the credit committee until successors elected at the next annual meeting have qualified; have charge of investments other than loans to members; determine from time to time the maximum number of shares that may be held by an individual; subject to the limitations of this act, determine the interest rates on loans and the maximum amount which may be loaned with or without security to any member; subject to such regulations as may be issued by the supervisor, authorize an interest refund to members of record at the close of business on December 31 in proportion to the interest paid by them during that year; and provide for compensation of necessary clerical and auditing assistance requested by the supervisory committee, and of loan officers appointed by the credit committee. A membership officer appointed by the board from among the members of the credit union, other than the treasurer, an assistant treasurer, or a loan officer, any [may] be authorized by the board to approve applications for membership under such conditions as the board may prescribe; except that such membership officer so authorized shall submit to the board at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting, together with such other related information as the by-laws or the board may require.

History: En. Sec. 14, Ch. 236, L. 1963.

14-144. Credit committee. The credit committee shall hold such meetings as the business of the credit union may require and not less frequently than once a month to consider applications for loans. Reasonable notice of such meetings shall be given to all members of the committee. No loan shall be made unless it is approved by a majority of the entire committee and by all members of the committee who are present at the

meeting at which the application is considered; except that the credit committee may appoint one or more loan officers, and delegate to him or them the power to approve loans within limits prescribed by the committee. Each loan officer shall furnish to the credit committee a record of each loan approved or not approved by him within seven (7) days of the date of the filing of the application therefor. All loans not approved by a loan officer shall be acted upon by the credit committee. No individual shall have authority to disburse funds of the credit union for any loan which has been approved by him in his capacity as a loan officer. Not more than one (1) member of the credit committee may be appointed as a loan officer. Applications for loans shall be made on forms prepared by such committee, which shall set forth the purpose for which the loan is desired, the security, if any, and such other data as may be required. For the purposes of this section an assignment of shares, or the endorsement of a note shall be deemed security.

History: En. Sec. 15, Ch. 236, L. 1963.

14-145. Supervisory committee. The supervisory committee shall make or cause to be made, at least quarterly, an examination of the affairs of the credit union, shall make or cause to be made a report of its quarterly examination to the board of directors; shall make or cause to be made an annual audit, a report of which shall be submitted to the members at the next annual meeting of the credit union; may suspend by a unanimous vote any officer of the credit union, or any member of the credit committee, or of the board of directors, until the next members' meeting, which members' meeting shall be held not less than seven (7) nor more than fourteen (14) days after such suspension and at which meeting such suspension shall be acted upon by the members; and may call by a majority vote a special meeting of the shareholders to consider any violation of this act, the certificate of incorporation or the by-laws, or any practice of the credit union deemed by the supervisory committee to be unsafe or unauthorized. Any member of the supervisory committee may be suspended by the board of directors. The members shall decide, at a meeting held not less than seven (7) nor more than fourteen (14) days after any such suspension, whether the suspended committee member shall be removed from or restored to the supervisory committee. The supervisory committee shall cause the passbooks and accounts of the members to be verified with the records of the treasurer from time to time, and not less frequently than once every two (2) years. As used in this section, the term "passbook" shall include any book, statement of account, or other record setting forth the members' transactions with the credit union.

History: En. Sec. 16, Ch. 236, L. 1963.

14-146. Rates of interest. Interest rates on loans made by a credit union shall not exceed one per centum (1%) per month on unpaid principal balances, inclusive of all charges incident to making the loan. This rate may also be stated as twelve per centum (12%) simple interest per annum.

History: En. Sec. 17, Ch. 236, L. 1963.

14-147. Power to borrow. A credit union may borrow from any source in total sum which shall not exceed fifty per centum (50%) of its total assets, after the deduction of the "notes payable account."

History: En. Sec. 18, Ch. 236, L. 1963.

14-148. Loans to members. A credit union may loan to members. Loans must be for provident or productive purposes and are made subject to the conditions contained in the by-laws. A borrower may repay his loan in whole or in part, during regular business hours on any day the credit union office is open for business and no penalty or minimum charge may be imposed for payments received in advance of schedule or for any loan paid in full prior to the maturity date. Loans to a director or member of the supervisory or credit committee shall not exceed the amount of his holdings in the credit union as represented by shares thereof plus the total unencumbered and unpledged shareholdings in the credit union of any member or members pledged as security for the obligation of such director or committee member. No director or member of the supervisory or credit committee shall endorse for borrowers.

History: En. Sec. 19, Ch. 236, L. 1963.

14-149. Reserves. Any entrance fee and charges provided by the by-laws and twenty per centum (20%) of the net earnings of each dividend period, before the declaration of any dividends, shall be set aside as a regular reserve against losses on bad loans and such other losses as may be specified in the by-laws in accordance with regulations prescribed under this act. This reserve shall be kept liquid and intact and not loaned out to members; provided, however, that when the regular reserve thus established shall equal ten per centum (10%) of the total amount of members' shareholdings, no further transfer of net earnings to such regular reserve shall be required except that such amounts not in excess of twenty per centum (20%) of the net earnings as may be needed to maintain this ten per centum (10%) ratio shall continue to be transferred. In addition to such regular reserves, special reserves to protect the interest of members shall be established when required (1) by regulation, or (2) in any special case when found by the supervisor to be necessary for that purpose.

History: En. Sec. 20, Ch. 236, L. 1963.

14-150. Dividends. Annually or semiannually, and after provision for the required reserve, and/or special reserves, the board of directors may declare a dividend to be paid from the remaining net earnings. Such dividends shall be paid on all paid-up shares outstanding at the end of the period for which the dividend is declared. Shares which become fully paid up during such dividend period and are outstanding at the close of the period shall be entitled to a proportional part of such dividend. Dividend credit for a month may be accrued on shares which are or become fully paid up during the first ten (10) days of that month. As the by-laws may require, dividend declarations made by the board may be subject to ratification by the members at each annual meeting and in the case of dividend declaration for the period ending December 31, the board may recommend

this declaration to the members at the annual meeting rather than declaring same.

History: En. Sec. 21, Ch. 236, L. 1963.

14-151. Expulsion—withdrawal. A member may be expelled by a two-thirds ($\frac{2}{3}$) vote of the members present at a special meeting called to consider the matter but only after an opportunity has been given him to be heard. Any member may withdraw from the credit union at any time but notice of withdrawal may be required. All amounts paid on shares of an expelled or withdrawing member, with any dividends or interest accredited thereto, to the date thereof, shall, as funds become available and after deducting all amounts due from the member to the credit union, be paid to him. Payment of any part or all of such accounts to any of the joint tenants or to a minor shall, to the extent of such payment, be valid and discharge the liability of the credit union to all joint tenants, to the minor, parent or guardian in respect to such share account.

The credit union may require sixty (60) days notice of intention to withdraw shares. Withdrawing or expelled members shall have no further rights in the credit union but are not, by such expulsion or withdrawal, released from any remaining liability to the credit union.

History: En. Sec. 22, Ch. 236, L. 1963.

14-152. Certain powers of supervisor. (1) The supervisor may prescribe rules and regulations for the administration of the act (including, but not by way of limitation, the merger, consolidation, and dissolution of credit unions organized under this act).

(2) Any credit union may, with the approval of the supervisor, and in accordance with such uniform rules and regulations as he shall make and promulgate be merged with another credit union, provided the membership of the one credit union is within the field of membership of the other, under the existing certificate of incorporation of such other credit union, pursuant to any plan agreed upon by the majority of the board of directors of each credit union joining in the merger, and approved by the affirmative vote of a majority of the members of each such credit union, either at meetings of the members, duly called for such purpose or in writing. All property, property rights and interest of the credit union so merging shall upon such merger be transferred to and vested in the credit union under whose certificate of incorporation the merger is effected without deed, endorsement, or other instrument of transfer, and the debts and obligations of the credit union so merging shall be deemed to have been assumed by the credit union under whose certificate of incorporation the merger is effected, and thereafter the certificate of incorporation of the credit union so merging shall be null and void and it shall cease to exist. Upon payment of the filing fees provided in section 26 [14-155] hereof, the supervisor shall file the certificate of merger with the secretary of state, and a copy thereof, certified by the secretary of state, shall be filed in the office of the county clerk of the county in which the principal place of business of the merged credit union is located. This section shall be construed, whenever possible to permit a credit union incorporated under any

other act to merge with one incorporated under this act, or to permit one incorporated under this act to merge with one incorporated under any other act.

(3) The proposition of voluntary dissolution may be considered at a membership meeting especially called by a four-fifths (4/5) vote of the board of directors of the credit union on a date set by said board for a vote thereon by the members (either at a meeting to be held on such date or by written ballot to be filed with the secretary before such date). Written notice of the proposition and of the date set for the vote shall then be delivered in person to each member, or mailed to each member at the address for such member appearing on the records of the credit union, not more than thirty (30) days and not less than ten (10) days prior to such date. At the same time, a copy of said notice shall also be mailed to the supervisor. Approval of the proposition for voluntary dissolution shall be by the affirmative vote of a majority of the members, in person or in writing. A statement of the results of the vote, verified by the affidavits of the president or vice president and the secretary, shall be filed with the supervisor within five (5) days after the vote is taken, and there shall be included with the affidavits, a list of the names of the directors and officers of the credit union together with their addresses. If the proposition for voluntary dissolution is approved by such vote, the credit union shall thereupon immediately cease to do business except for the purpose of liquidation.

(4) (a) The supervisor may suspend or revoke the certificate of incorporation of any credit union, or place the same in involuntary liquidation and appoint a liquidating agent therefore [therefor], upon his finding that the credit union is bankrupt or insolvent, or has violated any of the provisions of its certificate of incorporation, its by-laws, this act, or any regulations issued thereunder.

(b) The supervisor through such persons as he shall designate, may examine any credit union in voluntary liquidation and, upon his finding that such voluntary liquidation is not being conducted in an orderly or efficient manner or in the best interests of its members, may after holding a hearing or giving adequate opportunity for a hearing, order such credit union to correct such condition and shall grant it not less than sixty (60) days within which to comply, and failure to do so shall afford the supervisor grounds for terminating such voluntary liquidation and place such credit union in involuntary liquidation and appoint a liquidating agent therefor.

(c) Such liquidating agent shall have power and authority, subject to the control and supervision of the supervisor and under such rules and regulations as the supervisor may prescribe,

(i) To receive and take possession of the books, records, assets, and property of every description of the credit union in liquidation, to sell, enforce collection of, and liquidate all such assets and property, to compound all bad or doubtful debts, and to sue in his own name or in the name of the credit union in liquidation, and defend such actions as may be brought against him as liquidating agent or against the credit union;

(ii) To receive, examine, and pass upon all claims against the credit union in liquidation, including claims of members on shares;

(iii) To make distribution and payment to creditors and members as their interests may appear; and

(iv) To execute such documents and papers and to do such other acts and things which he may deem necessary or desirable to discharge his duties hereunder.

(d) Subject to the control and supervision of the supervisor and under such rules and regulations as the supervisor may prescribe, the liquidating agent of a credit union in involuntary liquidation shall

(i) Cause notice to be given to creditors and members to present their claims and make legal proof thereof, which notice shall be published once a week in each of three (3) successive weeks in a newspaper of general circulation in the county in which the credit union in liquidation maintained an office for the transaction of business on the date it ceased unrestricted operations; except that whenever the aggregate book value of the assets and property of a credit union in involuntary liquidation is less than \$10,000 unless the supervisor shall find that its books and records do not contain a true and accurate record of its liabilities, he shall declare such credit union in liquidation to be a "no publication" liquidation, and publication of notice to creditors and members shall not be required in such case;

(ii) From time to time make a ratable dividend on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction and, after the assets of such credit union have been liquidated, make further dividends on all claims previously proved or adjudicated, and he may accept in lieu of a formal proof of claim on behalf of any creditor or member the statement of any amount due to such creditor or member as shown on the books and records of the credit union; but all claims not filed before payment of the final dividend shall be barred and claims rejected or disallowed by the liquidating agent shall be likewise barred unless suit be instituted thereon within three (3) months after notice of rejection or disallowance; and

(iii) In a "no publication" liquidation, determine from all sources available to him, and within the limits of available funds of the credit union, the amounts due to creditors and members, and after sixty (60) days shall have elapsed from the date of his appointment distribute the funds of the credit union to creditors and members ratably and as their interests may appear.

(e) Upon certification by the liquidating agent in the case of an involuntary liquidation, and upon such proof as shall be satisfactory to the supervisor in the case of a voluntary liquidation, that distribution has been made and that liquidation has been completed, as provided herein, the supervisor shall cancel the certificate of incorporation of such credit union by issuing a certificate of dissolution on form prescribed by him, and file the same with the secretary of state, and a copy thereof shall be filed in the office of the county clerk of the county in which the principal place of business of the credit union is located; but the corporate existence

of the credit union shall continue for a period of three (3) years from the date of such cancellation of its certificate of incorporation, during which period the liquidating agent, or his duly appointed successor, or such persons as the supervisor shall designate, may act on behalf of the credit union for the purpose of paying, satisfying, and discharging any existing liabilities or obligations, collecting and distributing its assets, and doing all other acts required to adjust and wind up its business and affairs, and it may sue and be sued in its corporate name.

(5) After the expiration of eight (8) years from the date of cancellation of the certificate of incorporation of a credit union the supervisor may, in his discretion, destroy any or all books and records of such credit union in his possession or under his control.

(6) The supervisor is authorized and empowered to execute any and all functions and perform any and all duties vested in him hereby, through such persons as he shall designate or employ; and he may delegate to any person or persons, including any institution operating under the general supervision of the department, the performance and discharge of any authority, power, or function vested in him by this act.

(7) Any officer or employee of the department is authorized, when designated for the purpose by the supervisor to administer oaths and affirmations and to take affidavits and depositions touching upon any matter within the jurisdiction of the department as related to this act.

(8) The supervisor is authorized, empowered, and directed to require that every person appointed or elected by any credit union to any position requiring the receipt, payment, or custody, of money or other personal property owned by a credit union, or in its custody or control as collateral or otherwise, give bond in a corporate surety company licensed to do business in the state of Montana. Any such bond or bonds shall be in a form approved by the supervisor with a view to providing surety coverage to the credit union with reference to loss by reason of acts of fraud or dishonesty including forgery, theft, embezzlement, wrongful abstraction, or misapplication on the part of the person, directly or through connivance with others, and such other surety coverages as the supervisor may determine to be reasonably appropriate or as elsewhere required by this act. Any such bond or bonds shall be in such an amount in relation to the money or other personal property involved or in relation to the assets of the credit union as the supervisor may from time to time prescribe by regulation for the purpose of requiring reasonable coverage. In lieu of individual bonds the supervisor may approve the use of a form of schedule or blanket bond which covers all of the officers and employees of a credit union whose duties include the receipt, payment, or custody of money or other personal property for or on behalf of the credit union. The supervisor may also approve the use of a form of excess coverage bond whereby a credit union may obtain an amount of coverage in excess of the basic surety coverage.

History: En. Sec. 23, Ch. 236, L. 1963.

14-153. Partial invalidity—right to amend. (1) If any provision of this act, or the application thereof to any person or circumstance, is held

invalid, the remainder of the act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(2) The right to alter, amend, or repeal this act or any part thereof, or any certificate of incorporation issued pursuant to the provisions of this act, is expressly reserved.

History: En. Sec. 24, Ch. 236, L. 1963.

14-154. Change in place of business. A credit union may change its local business address on written notice to the supervisor.

History: En. Sec. 25, Ch. 236, L. 1963.

14-155. Disposal of fees—fees for filing and recording articles of incorporation. All fees and expenses collected by the supervisor from credit unions for examination shall be deposited with the state treasurer for the credit of the general fund. The secretary of state shall charge a flat fee of fifteen dollars (\$15) for filing and recording the articles of incorporation of credit unions and issuing the certificate of incorporation thereon, and ten dollars (\$10) for filing certificate of merger or dissolution and issuing certificate thereon, which fees shall be in lieu of all other filing fees.

History: En. Sec. 26, Ch. 236, L. 1963.

14-156. Conversion from state to federal credit union and from federal to state credit union. (1) A state credit union may be converted into a federal credit union under the laws of the United States by complying with the following requirements:

(a) The proposition for such conversion shall first be approved by a majority of the directors of the credit union, and a date set for a vote thereon by the members (either at a meeting to be held on such date or by written ballot to be filed on or before such date). Written notice of the proposition and of the date set for the vote shall then be delivered in person to each member, or mailed to each member at the address for such member appearing on the records of the credit union, not more than thirty (30) nor less than seven (7) days prior to such date. Approval of the proposition for conversion shall be by the affirmative vote of a majority of the members, in person or in writing.

(b) A statement of the results of the vote, verified by the affidavits of the president or vice president and the secretary, shall be filed with the department within ten (10) days after the vote is taken.

(c) Promptly after the vote is taken and in no event later than ninety (90) days thereafter, if the proposition for conversion was approved by such vote, the credit union shall take such action as may be necessary under the applicable federal laws to make it a federal credit union, and within ten (10) days after receipt of the federal credit union certificate of incorporation there shall be filed with the department a copy of the certificate of incorporation thus issued. Upon such filing the credit union shall cease to be a state credit union.

(d) Upon ceasing to be a state credit union, such credit union shall no longer be subject to any of the provisions of this act. The successor federal credit union shall be vested with all of the assets and shall con-

tinue responsible for all of the obligations of the state credit union to the same extent as though the conversion had not taken place.

(2) (a) A federal credit union, organized under the laws of the United States may be converted into a state credit union by:

(i) Complying with all federal requirements requisite to enabling it to convert to a state credit union or to cease being federal credit union,

(ii) Filing with the department proof of such compliance, satisfactory to the supervisor, and

(iii) Filing with the department articles of incorporation and by-laws as required by this act.

(b) When the supervisor has been satisfied that all of such requirements, and all other requirements of this act, have been complied with, the supervisor shall approve the articles of incorporation and by-laws. Upon such approval, the federal credit union shall become a state credit union as of the date it ceases to be a federal credit union. The state credit union shall be vested with all of the assets and shall continue responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place.

History: En. Sec. 27, Ch. 236, L. 1963.

14-157. Application of act. Nothing contained in this act shall apply to persons or corporations engaged in the business of loaning money under the provisions of the banking, building and loan, and other laws of the state of Montana. This act to apply to and govern only those doing business as credit unions.

History: En. Sec. 28, Ch. 236, L. 1963.

14-158. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

History: En. Sec. 29, Ch. 236, L. 1963.

Repealing Clause

Section 30 of Ch. 236, Laws 1963 read
"Repeal. This act expressly repeals Title

14, Chapter 1 of the Revised Codes of Montana, 1947, as amended and all other acts and parts of acts in conflict herewith."

CHAPTER 2—COOPERATIVE ASSOCIATIONS

Section 14-201. Incorporation of cooperative associations.

14-204. Certificate of incorporation—amendment of articles of incorporation.

14-201. (6375) Incorporation of cooperative associations. Whenever any number of persons, not less than three, nor more than seven, may desire to become incorporated as a cooperative association for the purpose of trade, or of prosecuting any branch of industry, or the purchase and distribution of commodities for consumption, or in the borrowing or lending of money among members for industrial purposes, they shall make a statement to that effect under their hands, duly acknowledged by a notary public, in

the manner provided for the acknowledgment of deeds, setting forth the name of the proposed corporation, its capital stock, its location, and duration of the association, and the particular branch or branches of industry which they intend to prosecute, which statement shall be filed in the office of the secretary of state as the articles of incorporation of the association. The secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of such corporation, at such time and place as they may determine, for which he shall receive the fee of twenty dollars (\$20.00).

History: En. Sec. 870, Civ. C. 1895; re-en. Sec. 4210, Rev. C. 1907; re-en. Sec. 6375, R. C. M. 1921; amd. Sec. 1, Ch. 273, L. 1955; amd. Sec. 2, Ch. 117, L. 1961. Cal. Civ. C. Sec. 653b.

Amendment

The 1961 amendment increased the fee specified at the end of the section from \$5.00 to \$20.00.

14-204. (6378) Certificate of incorporation—amendment of articles of incorporation. The commissioners shall make a full report of their proceedings, including therein a copy of the notice provided for in the preceding section, a copy of the subscription list, a copy of the by-laws adopted by the association, and the names of the directors elected and their respective terms of office, which report shall be sworn to by at least a majority of the commissioners, and shall be filed in the office of the secretary of state. The secretary of state shall thereupon issue a certificate of the complete organization of the association, making a part thereof a copy of all papers filed in his office, in and about the organization, and duly authenticated, under his hand and seal of the state, for which he shall receive the sum of twenty dollars (\$20.00), and thereupon a certified copy of said certificate shall be filed in the office of the county clerk in which the principal office of the association is located. Upon the filing of said certified copy, the association shall be deemed to be fully organized and may proceed to business. At any time after the filing of the certificate of complete organization, the articles of incorporation may be amended. Any amendment of the articles of incorporation shall first be approved by two-thirds of the directors and then adopted by a vote of not less than two-thirds of those stockholders voting thereon at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose. A certificate setting forth such amendment shall be executed and acknowledged on behalf of the association by its president or vice-president, and its corporate seal affixed thereto and attested by its secretary. Such certificate shall be filed in the office of the secretary of state who shall thereupon issue a certificate of amendment of the articles of incorporation, for which he shall receive the sum of ten dollars (\$10.00), and thereupon a certified copy of such certificate shall be filed in the office of the county clerk in which the principal office of the association is located.

History: En. Sec. 873, Civ. C. 1895; re-en. Sec. 4213, Rev. C. 1907; re-en. Sec. 6378, R. C. M. 1921; amd. Sec. 3, Ch. 273, L. 1955; amd. Sec. 3, Ch. 117, L. 1961.

Amendment

The 1961 amendment increased the fee specified in the second sentence from \$5.00 to \$20.00 and the fee specified in the last sentence from \$5.00 to \$10.00.

CHAPTER 3—COOPERATIVE AGRICULTURAL CORPORATIONS AND DISTRICTS

14-302. (6398) Petition—contents and filing—bond.

Cross-Reference

Application of Montana Rules of Civil

Procedure to proceeding for incorporation, see Table A, M. R. Civ. P. (sec. 93-2711-7).

14-319. (6415) Creation of debt—passage of resolution.

Cross-Reference

Application of Montana Rules of Civil
Procedure to proceeding for approval of

indebtedness, see Table A, M. R. Civ. P. (sec. 93-2711-7).

CHAPTER 4—COOPERATIVE MARKETING ACT

Section 14-422. Filing fees.

14-422. (6449) Filing fees. For filing articles of incorporation and receiving a certificate of incorporation an association organized hereunder shall pay to the secretary of state, forty dollars (\$40.00); and for filing an amendment to the articles and receiving a certificate of amendment, ten dollars (\$10.00).

History: En. Sec. 22, Ch. 233, L. 1921; re-en. Sec. 6449, R. C. M. 1921; amd. Sec. 4, Ch. 117, L. 1961.

Amendment

The 1961 amendment inserted the words "and receiving a certificate of incorpora-

tion" in the first clause; increased the fee specified therein from \$5.00 to \$40.00; inserted the words "and receiving a certificate of amendment" in the final clause; and increased the fee specified therein from \$2.50 to \$10.00.

CHAPTER 5—RURAL ELECTRIC AND TELEPHONE COOPERATIVE ACT

Section 14-501. Act, how cited.

14-502. Purpose.

14-503. Powers.

14-504. Name.

14-508. Members.

14-510. Voting districts.

14-516. Conversion of existing corporations.

14-527. Fees.

14-528. Exemption from excise taxes—license fee.

14-530. Definitions.

14-501. Act, how cited. This act may be cited as the "Rural Electric and Telephone Cooperative Act."

History: En. Sec. 1, Ch. 172, L. 1939; amd. Sec. 1, Ch. 80, L. 1957.

Amendment

The 1957 amendment added the words "and telephone" to the name of this act.

14-502. Purpose. Cooperative, nonprofit, membership corporations may be organized under this act for the following purposes:

(a) For the purpose of supplying electric energy and promoting and extending the use thereof in rural areas, in which electrical current and service are not otherwise available, from existing facilities and plants;

(b) For the purpose of making generally available in rural areas adequate telephone service through the improvement and expansion of existing telephone facilities and the construction and operation of such additional facilities as are required to assure the availability of such service to the widest practicable number of rural users thereof, provided that non-

duplication of lines, facilities or systems providing reasonably adequate service will result therefrom.

Corporations organized under this act and corporations which become subject to this act in the manner hereinafter provided are hereinafter referred to as "cooperatives."

History: En. Sec. 2, Ch. 172, L. 1939;
amd. Sec. 2, Ch. 80, L. 1957.

Amendment

The 1957 amendment subdivided this section into (a) and (b) subdivisions; inserted the words "for the following purposes" at the end of the introduction; in subd. (a) substituted "are" for "is"; added subd. (b), and began a new paragraph with the word "Corporations."

Electric Service

A rural electric co-operative did not have a lawful right to service an addition contemplated, planned, promoted and organized as a subdivision to a city. *Montana Power Co. v. Park Electric Co-operative*, — M —, 371 P 2d 1, 4.

An electric power company could maintain an action to restrain a rural electric co-operative from supplying electric service to customers in an addition to a city. *Montana Power Co. v. Park Electric Co-operative*, — M —, 371 P 2d 1, 4.

14-503. Powers. A cooperative shall have power:

- (a) To sue and be sued, in its corporate name;
- (b) To have perpetual existence;
- (c) To adopt a corporate seal and alter the same at pleasure;
- (d) To become a member in one or more other cooperatives or corporations or to own stock therein;
- (e) To construct, purchase, take, receive, lease as lessee, or otherwise acquire, and to own, hold, use, equip, maintain, and operate, and to sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, telephone lines, facilities or systems (but not telegraph or radio broadcasting services or facilities), as defined by law, lands, buildings, structures, dams, plants and equipment, and any and all kinds or classes of real or personal property whatsoever, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized;
- (f) To purchase or otherwise acquire, and to own, hold, use and exercise and to sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber, franchises, rights, privileges, licenses, rights of way and easements;
- (g) To borrow money and otherwise contract indebtedness, and to issue notes, bonds and other evidences of indebtedness therefor, and to secure the payment thereof by mortgage, pledge, deed of trust, or any other encumbrance upon any or all of its then owned or after-acquired real or personal property, assets, franchises, revenues or income;
- (h) To construct, maintain and operate electric transmission and distribution lines, or telephone lines, facilities or systems, along, upon, under and across all public thoroughfares, including without limitation all roads, highways, streets, alleys, bridges and causeways, and upon, under and across all publicly-owned lands, subject, however, to the same requirements in respect of the use of such thoroughfares and lands as are imposed by the respective authorities having jurisdiction thereof upon

corporations constructing or operating electric transmission and distribution lines or systems, or telephone lines, facilities or systems;

(i) To exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems, or telephone lines, facilities or systems;

(j) To conduct its business and exercise any or all of its powers within or without this state;

(k) To adopt, amend and repeal by-laws;

(l) In the case of corporations organized under the provisions of paragraph (a) of section 14-502, Revised Codes of Montana, 1947, as amended by section 2 of this act:

(1) To generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and to distribute, sell, supply and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of ten per centum (10%) of the number of its members;

(2) To make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, wiring their premises and installing therein electrical and plumbing fixtures, appliances, apparatus and equipment of any and all kinds and character, and in connection therewith, to purchase, acquire, lease, sell, distribute, install and repair such electrical and plumbing fixtures, appliances, apparatus and equipment, and to accept, or otherwise acquire, and to sell, assign, transfer, endorse, pledge, hypothecate and otherwise dispose of notes, bonds and other evidences of indebtedness and any and all types of security therefor;

(3) To make loans to persons to whom electric energy is or will be supplied by the cooperatives for the purpose of, and otherwise to assist such persons in, constructing, maintaining and operating electric refrigeration plants.

(m) In the case of corporations organized under the provisions of paragraph (b) of section 14-502, Revised Codes of Montana, 1947, as amended by section 2 of this act:

(1) To improve and expand existing telephone lines, facilities and systems in rural areas and to construct, acquire, operate and furnish such additional telephone lines, facilities, and systems, as are required to assure the availability of adequate telephone service to the widest practicable number of rural users thereof, provided that no duplication of lines, facilities or systems providing reasonably adequate service will result therefrom.

(2) To make loans to persons to whom telephone service is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, wiring their premises for telephone service, and installing therein telephone fixtures, appliances, apparatus and equipment of any and all kinds and character, and in connection therewith, to purchase, acquire, lease, sell, distribute, install and repair such telephone fixtures, appliances, apparatus and equipment, and to accept, or otherwise acquire, and to sell, assign, transfer, endorse, pledge, hypothecate, and otherwise

dispose of notes, bonds and other evidences of indebtedness and any and all types of security therefor;

(n) To do and perform any and all other acts and things, and to have and exercise any and all other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized.

History: En. Sec. 3, Ch. 172, L. 1939; amd. Sec. 3, Ch. 80, L. 1957.

Amendment

The 1957 amendment re-subdivided and rewrote this section. For section prior to amendment see parent volume.

Action to Determine Rights

Where a controversy existed between a rural electric co-operative and an electric power company as to the right of the co-operative to supply service to an addition to the city, the co-operative could have brought an action under sections 93-8901 to 93-8916 (Uniform Declaratory Judgments Act) to deter-

mine its legal position before proceeding to install facilities to service the addition. *Montana Power Co. v. Park Electric Co-operative*, — M —, 371 P 2d 1, 6.

Underground Installations

A power company which operated an electric line along the edge of an addition to a city, was not required to pay for facilities and underground installations constructed by a rural electric co-operative in such addition despite protests of power company. *Montana Power Co. v. Park Electric Co-operative*, — M —, 371 P 2d 1, 6.

14-504. Name. The name of each cooperative shall include the words "electric" or "telephone" and "cooperative," and the abbreviation "Inc.," provided, however, such limitations shall not apply if, in an affidavit made by the president or vice-president of a cooperative and filed with the secretary of state, it shall appear that the cooperative desires to transact business in another state and is precluded therefrom by reason of its name. The name of a cooperative shall distinguish it from the name of any other corporation organized under the laws of, or authorized to transact business in, this state. The words "electric" or "telephone" and "cooperative" shall not both be used in the name of any corporation organized under the laws of, or authorized to transact business in, this state, except a cooperative or a corporation transacting business in this state pursuant to the provisions of this act.

History: En. Sec. 4, Ch. 172, L. 1939; amd. Sec. 4, Ch. 80, L. 1957.

Amendment

The 1957 amendment inserted the words "or telephone" both times they appear in this section.

14-508. Members. (a) No person who is not an incorporator shall become a member of a cooperative unless such person shall agree to use electric energy or telephone service furnished by the cooperative when such electric energy or telephone service shall be available through its facilities. The by-laws may provide that any person, including an incorporator, shall cease to be a member of a cooperative if he shall fail or refuse to use electric energy or telephone service made available by the cooperative or if electric energy or telephone service shall not be made available to such person by the cooperative within a specified time after such person shall have become a member thereof. Membership in the cooperative shall not be transferable, except as provided in the by-laws. The by-laws may prescribe additional qualifications and limitations in respect to membership.

(b) An annual meeting of the members shall be held at such time as shall be provided in the by-laws.

(c) Special meetings of the members may be called by the board of trustees, by any three trustees, by not less than ten per centum (10%) of the members, or by the president.

(d) Meetings of members shall be held at such place as may be provided in the by-laws. In the absence of any such provision, all meetings shall be held in the city or town in which the principal office of the cooperative is located.

(e) Except as hereinafter otherwise provided, written or printed notice stating the time and place of each meeting of members, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each member, either personally or by mail, not less than ten (10) nor more than twenty-five (25) days before the date of the meeting.

(f) Five per centum (5%) of all members present in person shall constitute a quorum for the transaction of business at all meetings of the members, but the by-laws may prescribe the presence of a greater percentage of the members for a quorum. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(g) Each member shall be entitled to one vote on each matter submitted to a vote at a meeting. Voting shall be in person, but, if the by-laws so provide, may also be by proxy or by mail, or both. If the by-laws provide for voting by proxy or by mail, they shall also prescribe the conditions under which proxy or mail voting or both shall be exercised. In any event, no person shall vote as proxy for more than three (3) members at any meeting of the members.

History: En. Sec. 8, Ch. 172, L. 1939; amd. Sec. 5, Ch. 80, L. 1957.

"or telephone service" each time they appear in subd. (a) and in the last sentence of said subdivision substituted the word "to" for "of."

Amendment

The 1957 amendment inserted the words

14-510. Voting districts. Notwithstanding any other provisions of this act, the by-laws may provide that the territory in which a cooperative supplies electric energy or telephone service to its members shall be divided into two or more voting districts and that in respect to each such voting district (1) a designated number of trustees shall be elected by the members residing therein, or (2) a designated number of delegates shall be elected by the members residing therein, or (3) both such trustees and delegates shall be elected by such members. In any such case the by-laws shall prescribe the manner in which such voting districts and the members thereof, and the delegates and trustees, if any, elected therefrom shall function and the powers of the delegates, which may include the power to elect trustees. No member at any voting district meeting and no delegate at any meeting shall vote by proxy or by mail.

History: En. Sec. 10, Ch. 172, L. 1939; amd. Sec. 6, Ch. 80, L. 1957.

tuted the word "to" for "of" which appeared between the words "respect" and "each" in the first sentence.

Amendment

The 1957 amendment inserted the words "or telephone service" and substi-

14-516. Conversion of existing corporations. Any corporation organized under the laws of this state for the purpose, among others, of supplying electric energy or telephone service in rural areas may become subject to this act with the same effect as if originally organized under this act by complying with the following requirements:

(a) The proposition for the conversion of such corporation into a cooperative under this act and proposed articles of conversion to give effect thereto shall be first approved by the board of trustees or the board of directors, as the case may be, of such corporation. The proposed articles of conversion shall recite in the caption that they are executed pursuant to this act and shall state: (1) the name of the corporation prior to its conversion into a cooperative under this act; (2) the address of the principal office of such corporation; (3) the date of the filing of its articles of incorporation in the office of the secretary of state; (4) the statute or statutes under which such corporation was organized; (5) the name assumed by such corporation; (6) a statement that such corporation elects to become a cooperative, non-profit, membership corporation subject to this act; (7) the manner and basis of converting either memberships in or shares of stock of such corporation into memberships therein after completion of the conversion; and (8) any provisions not inconsistent with this act deemed necessary or advisable for the conduct of its business and affairs;

(b) The proposition for the conversion of such corporation into a cooperative under this act and the proposed articles of conversion approved by the board of trustees or board of directors, as the case may be, of such corporation shall then be submitted to a vote of the members or stockholders, as the case may be, of such corporation at any duly held annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed conversion. The proposition for the conversion of such corporation into a cooperative under this act and the proposed articles of conversion, with such amendments thereto as the members or stockholders of such corporation shall choose to make therein, shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of such corporation voting thereon at such meeting, or, if such corporation is a stock corporation, upon the affirmative vote of the holders of not less than two-thirds of the capital stock of such corporation represented at such meeting;

(c) Upon such approval by the members or stockholders of such corporation, articles of conversion in the form approved by such members or stockholders of such corporation shall be executed and acknowledged on behalf of such corporation by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary or assistant secretary. The president or vice-president executing such articles of conversion on behalf of such corporation shall also make and annex thereto an affidavit stating that the provisions of this section with respect to the approval of its trustees or directors and its members or stockholders, of the proposition for the conversion of such corporation into a cooperative under this act and such articles of conversion were duly complied with. Such articles of conversion and affidavit shall be submitted to the secre-

tary of state for filing as provided in this act; and

(d) The term "articles of incorporation" as used in this act shall be deemed to include the articles of conversion of a converted corporation.

History: En. Sec. 16, Ch. 172, L. 1939; amd. Sec. 7, Ch. 80, L. 1957.

Amendment

The 1957 amendment in the first paragraph inserted the words "or telephone

service"; deleted the words "be converted into a cooperative and" which appeared between the words "may" and "become" and inserted the words "under this act" each time they appear in subds. (a), (b) and (c).

14-523. Repealed.

Repeal

This section (Sec. 23, Ch. 172, L. 1939), relating to the recordation of mortgages,

was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

14-527. Fees. The secretary of state shall charge and collect for:

(a) Filing articles of incorporation and issuing a certificate of incorporation, forty dollars (\$40.00);

(b) Filing articles of amendment and issuing a certificate of amendment, ten dollars (\$10.00);

(c) Filing articles of consolidation or merger and issuing a certificate of consolidation or merger, ten dollars (\$10.00);

(d) Filing articles of conversion and issuing a certificate of conversion, ten dollars (\$10.00);

(e) Filing certificate of election to dissolve and issuing certificate of election to dissolve, ten dollars (\$10.00);

(f) Filing articles of dissolution and issuing certificate of dissolution, ten dollars (\$10.00); and

(g) Filing certificate of change of principal office and issuing certificate of change of office, ten dollars (\$10.00).

History: En. Sec. 27, Ch. 172, L. 1939; amd. Sec. 5, Ch. 117, L. 1961.

Amendment

The 1961 amendment increased the fee in subd. (a) from \$5.00 to \$40.00; increased each of the fees in subds. (b) to (g) from \$5.00 to \$10.00; and inserted "and issuing a certificate of incorporation"

in subd. (a), "and issuing a certificate of amendment" in subd. (b), "and issuing a certificate of consolidation or merger" in subd. (c), "and issuing a certificate of conversion" in subd. (d), "and issuing certificate of election to dissolve" in subd. (e), "and issuing certificate of dissolution" in subd. (f), and "and issuing certificate of change of office" in subd. (g).

14-528. Exemption from excise taxes—license fee. Cooperatives and foreign corporations, transacting business in this state pursuant to the provisions of this act, shall pay annually, on or before the first day of July, to the secretary of state, a fee of ten dollars (\$10.00) for each one hundred (100) persons or fractions thereof to whom electricity or telephone service is supplied within the state, but shall be exempt from all other excise and income taxes of whatsoever kind or nature.

History: En. Sec. 28, Ch. 172, L. 1939; amd. Sec. 8, Ch. 80, L. 1957.

Amendment

The 1957 amendment inserted the words "or telephone service."

14-530. Definitions. In this act, unless the context otherwise requires:

(a) "Rural area" as applied to all corporations organized under the provisions of paragraph (a) of section 14-502, Revised Codes of Montana, 1947, as amended by section 2 of this act, means any area not included within the boundaries of any incorporated or unincorporated city, town, village or borough having a population in excess of thirty-five hundred (3500) persons at the time of the passage and approval of chapter 172, Session Laws of Montana, 1939; or subsequent thereto; "rural area" as applied to all corporations organized under the provisions of paragraph (b) of section 14-502, Revised Codes of Montana, 1947, as amended by section 2 of this act, means any area not included within the boundaries of any incorporated or unincorporated city or town having a population in excess of fifteen hundred (1500) persons.

(b) "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof or any body politic; and

(c) "Member" means each incorporator of a cooperative and each person admitted to and retaining membership therein, and shall include a husband and wife admitted to joint membership.

History: En. Sec. 30, Ch. 172, L. 1939; amd. Sec. 1, Ch. 151, L. 1949; amd. Sec. 9, Ch. 80, L. 1957.

and approval of chapter 172, Session Laws of Montana, 1939, or subsequent thereto."

Repealing Clause

Section 10 of Ch. 80, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 11 of Ch. 80, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 2, 1957.

Amendment

The 1957 amendment made substantial changes in subd. (a). Prior to this amendment it read "(a) 'Rural area' means any area not included within the boundaries of any incorporated or unincorporated city, town, village or borough having a population in excess of thirty-five hundred (3500) persons at the time of the passage

TITLE 15—CORPORATIONS

- Chapter 1. The creation of private corporations, 15-103, 15-104, 15-108.
2. Change in organization—amendment of articles—extension of life of certain corporations, 15-201, 15-204.
 3. By-laws, 15-302.
 4. Directors, 15-401.
 6. Corporate stock and rights of stockholders—Uniform Act for Simplification of Fiduciary Security Transfers, 15-606, 15-652 to 15-662.
 10. Corporate records, 15-1001.
 11. Dissolution of corporations by quo warranto—by decree of court—by act of directors and by other methods, 15-1101, 15-1119 to 15-1131.
 18. Merger of corporations engaged in petroleum products business, 15-1801.
 19. Consolidation or merger of corporations, 15-1901.
 20. Securities Act of Montana, 15-2001 to 15-2025.
 21. Professional service corporations, 15-2101 to 15-2116.

CHAPTER 1—THE CREATION OF PRIVATE CORPORATIONS

- Section 15-103. Private corporations—how formed.
- 15-104. Purposes for which private corporations may be formed.
- 15-108. Articles of incorporation—what to contain.

15-103. (5902) Private corporations—how formed. Private corporations may be formed by the voluntary association of any three or more persons in the manner prescribed in this chapter. In addition, they may be formed in the manner prescribed in "The Professional Service Corporation Act."

History: En. Sec. 392, Civ. C. 1895; re-en. Sec. 3807, Rev. C. 1907; re-en. Sec. 5902, R. C. M. 1921; amd. Sec. 1, Ch. 161, L. 1963. Cal. Civ. C. Sec. 285.	Amendment The 1963 amendment added the second sentence.
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15-104. (5903) Purposes for which private corporations may be formed. The purposes for which the private corporations mentioned in the last section may be formed are:

1 to 32. * * * [Same as parent volume.] ✓

33. The rendering of professional services as defined in the Professional Service Corporation Act.

No corporation must be formed for any other purpose than those mentioned in this section.

History: En. Sec. 393, Civ. C. 1895; re-en. Sec. 3808, Rev. C. 1907; amd. Sec. 1, Ch. 106, L. 1909; amd. Sec. 1, Ch. 95, L. 1921; re-en. Sec. 5903, R. C. M. 1921; amd.	Sec. 2, Ch. 161, L. 1963. Cal. Civ. C. Sec. 286.
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Amendment

The 1963 amendment added clause 33.

15-108. (5905) Articles of incorporation—what to contain. Articles of incorporation must be prepared, setting forth:

1. The name of the corporation;
2. The purpose for which it is formed;
3. The name of the county, and the city, town or place within the county, in which its principal office or principal place of business is to be located in this state;

4. The term for which it is to exist, not exceeding forty (40) years;
5. The number of its directors or trustees, which shall not be less than three (3) and the names and residences of those who are appointed for the first three (3) months, and until their successors are elected and qualified. Subject to such limitation, the number of directors shall be fixed by the by-laws, and amendments thereto duly adopted by the stockholders or directors. The number of directors may be increased or decreased from time to time by amendment to the by-laws, duly adopted by the stockholders or directors, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a by-law fixing the number of directors, the number shall be the number stated in the articles of incorporation.

6 to 8. * * * [Same as parent volume.] ✓

History: En. Sec. 403, Civ. C. 1895; amd. Sec. 1, Ch. 102, L. 1905; re-en. Sec. 3818, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1915; re-en. Sec. 5905, R. C. M. 1921; amd. Sec. 1, Ch. 35, L. 1931; amd. Sec. 1, Ch. 183, L. 1963. Cal. Civ. C. Sec. 290.

Amendment

The 1963 amendment deleted the words "nor more than thirteen (13)" which followed "not be less than three (3)" near the beginning of paragraph 5; and added the second, third, and fourth sentences of paragraph 5.

CHAPTER 2—CHANGE IN ORGANIZATION—AMENDMENT OF ARTICLES—EXTENSION OF LIFE OF CERTAIN CORPORATIONS

Section 15-201. Amendment of articles of incorporation—purposes.

15-204. Contents of notice.

15-201. (5918) Amendment of articles of incorporation—purposes. Any corporation heretofore or hereafter organized under any of the laws of the state of Montana, may, in the manner herein provided, amend its articles of incorporation by changing the name, place of business or number of directors, or to provide that the number of directors may be fixed by the by-laws, by changing the number, par value, character, class or preference of its shares of capital stock, by increasing or decreasing the capital stock, by changing or extending its powers or business to embrace any power or purpose for which corporations may be organized under the laws of Montana, or by an amendment in respect to any other matter which might lawfully have been originally provided in such articles of incorporation, or is now or may be, by law, provided in original articles of incorporation or in amendments thereto.

History: En. Sec. 1, Ch. 56, L. 1921; re-en. Sec. 5918, R. C. M. 1921; amd. Sec. 1, Ch. 28, L. 1925; amd. Sec. 1, Ch. 38, L. 1931; amd. Sec. 1, Ch. 32, L. 1947; amd. Sec. 2, Ch. 183, L. 1963. Cal. Civ. C. Sec. 362. (Sections 5918-5929, R. C. M. 1921 superseded secs. 3812-3814, 3826-3828, 3849, 3894 and 3907, Rev. C. 1907, and all acts

amendatory thereof; also Ch. 100, L. 1915.)

Amendment

The 1963 amendment inserted the words "or to provide that the number of directors may be fixed by the by-laws."

15-204. (5921) Contents of notice. Said notice shall state the time and place of said meeting, shall distinctly specify the purpose thereof, and shall specifically state the proposed change of name, if any; the place from which and to which it is proposed to change its principal place of business, if any; the proposed increase or decrease in the number of its

trustees or directors, if any, provided, however, that the number thereof shall at no time be less than three; that it is proposed that the number of directors may be fixed by the by-laws; the proposed change in the number, par value, character, class or preference of the shares of capital stock, if any; the extent of the proposed increase or decrease of the amount of capital stock, if any; the proposed change or extension of the business of such corporation, if any; the length of the proposed extension of the term of existence of such corporation, if any; and a specific statement of the nature of any other proposed amendment.

History: En. Sec. 4, Ch. 56, L. 1921; re-en. Sec. 5921, R. C. M. 1921; amd. Sec. 3, Ch. 183, L. 1963. (Secs. 5918-5929, R. C. M. 1921, superseded secs. 3812-3814, 3826-3828, 3849, 3894 and 3907, Rev. C. 1907, and all acts amendatory thereof; also Ch. 100, L. 1915.)

Amendment

The 1963 amendment deleted the words "nor more than thirteen" which followed "less than three" in the clause pertaining to changes in the number of trustees or directors; and inserted the words "that it is proposed that the number of directors may be fixed by the by-laws."

CHAPTER 3—BY-LAWS

Section 15-302. By-laws—may provide for what.

15-302. (5931) By-laws—may provide for what. A corporation may, by its by-laws, where no other provision is specially made, provide for:

1. The time, place, and manner of calling and conducting its meetings;
2. The number of stockholders or members constituting a quorum;
3. The mode of voting by proxy;
4. The number of directors and the mode and manner of increasing or decreasing the number of directors; the time of the annual election of directors, and the mode and manner of giving notice thereof;
5. The compensation and duties of officers;
6. The manner of election and the tenure of office of all officers other than the directors; and,
7. Suitable penalties for violations of by-laws, not exceeding, in any case, one hundred dollars (\$100) for any one offense.

History: En. Sec. 432, Civ. C. 1895; re-en. Sec. 3831, Rev. C. 1907; re-en. Sec. 5931, R. C. M. 1921; amd. Sec. 4, Ch. 183, L. 1963. Cal. Civ. C. Sec. 303.

Amendment

The 1963 amendment inserted "The number of directors and the mode and manner of increasing or decreasing the number of directors" at the beginning of clause 4.

CHAPTER 4—DIRECTORS

Section 15-401. Corporate powers and business exercised by board of directors—number and membership of board—quorum.

15-401. (5933) Corporate powers and business exercised by board of directors—number and membership of board—quorum. The corporate powers, business, and property of all corporations formed under this title must be exercised, conducted and controlled by a board of not less than three (3) directors, to be elected from among the holders of stock, or where there is no capital stock, then from the members of such

corporations. Directors of corporations for profit must be holders of stock therein in an amount to be fixed by the by-laws of the corporation, except those named in the articles of incorporation for the first three (3) months, who shall be directors until their successors are elected and qualified. Directors of all other corporations must be members thereof. Unless a quorum is present and acting, no business performed or act done is valid as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board. When a vacancy or vacancies in the office of director is created by virtue of an increase in the number of directors by a by-law adopted by the stockholders or the board of directors such vacancy or vacancies shall be filled by an appointee or appointees of the board of directors and such appointee or appointees shall hold the office of director until the next regular annual election of directors when the office held by such appointee or appointees shall be filled by an election of the stockholders or members as in the case of the election of other directors.

History: En. Sec. 434, Civ. C. 1895; re-en. Sec. 3833, Rev. C. 1907; re-en. Sec. 5933, R. C. M. 1921; amd. Sec. 5, Ch. 183, L. 1963. Cal. Civ. C. Sec. 305.

Amendment

The 1963 amendment deleted the words "nor more than thirteen" which preceded "directors" in the first sentence; and added the last sentence.

Repealing Clause

Section 6 of Ch. 183, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 7 of Ch. 183, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 7, 1963.

15-405. (5937) Election of directors.

Cumulative Voting

A corporation may not deprive a stockholder of the right of cumulative voting by any act on its part. *Sensabaugh v. Polson Plywood Co.*, 135 M 562, 342 P 2d 1064.

Stockholders may contract among themselves with respect to voting their stock

and a contract to refrain from cumulative voting is valid. However, an invalid by-law, attempting to dispense with cumulative voting, was not enforceable as a contract, even among those stockholders assenting to it. *Sensabaugh v. Polson Plywood Co.*, 135 M 562, 342 P 2d 1064.

CHAPTER 6—CORPORATE STOCK AND RIGHTS OF STOCKHOLDERS—UNIFORM ACT FOR SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS

- Section 15-606. Five per cent of stock may demand statement.
- 15-652. Definitions.
- 15-653. Registration in the name of a fiduciary.
- 15-654. Assignment by a fiduciary.
- 15-655. Evidence of appointment or incumbency.
- 15-656. Adverse claims.
- 15-657. Non-liability of corporation and transfer agent.
- 15-658. Non-liability of third persons.
- 15-659. Territorial application.
- 15-660. Tax obligations.
- 15-661. Uniformity of interpretation.
- 15-662. Short title.

15-603. (5954) Repealed.

Repeal

This section (Sec. 1, Ch. 143, L. 1907), relating to the passage of title on the

transfer of shares, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

15-605. (5956) Repealed.**Repeal**

This section (Sec. 474, Civ. C. 1895), relating to the transfer of shares of non-

resident stockholders, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

15-606. (5957) Five per cent of stock may demand statement. Whenever any person or persons owning five per cent of the capital stock of any corporation shall present a written request to the treasurer thereof that they desire a statement of the affairs of such corporation, it shall be the duty of such treasurer to make a statement under oath, of its assets and liabilities in a form ordinarily used and accepted in commercial transactions, and to deliver such statement to the persons who presented the said written request to said treasurer within twenty days after such presentation; and shall also, at the same time, place and keep on file in his office for six months thereafter a copy of such statement, which shall, at all times during business hours, be exhibited to any stockholder of said corporation demanding an examination thereof; such treasurer, however, shall not be required to deliver such statement in the manner aforesaid oftener than once in six months. If such treasurer shall neglect or refuse to comply with any provisions of this chapter, he shall forfeit and pay to the person presenting said request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in any court having cognizance thereof.

History: En. Sec. 27, p. 31, L. 1867; re-en. Sec. 27, p. 412, Cod. Stat. 1871; re-en. Sec. 270, 5th Div. Rev. Stat. 1879; re-en. Sec. 472, 5th Div. Comp. Stat. 1887; re-en. Sec. 475, Civ. C. 1895; re-en. Sec. 3858, Rev. C. 1907; re-en. Sec. 5957, R. C. M. 1921; amd. Sec. 1, Ch. 93, L. 1961.

Amendment

The 1961 amendment substituted in the first sentence a phrase reading "under oath, of its assets and liabilities in a form ordinarily used and accepted in commercial transactions" for one which read "of the affairs of the corporation, under oath, embracing a particular account of all its assets and liabilities in minute detail."

15-628 to 15-651. Repealed.**Repeal**

These sections (Secs. 1 to 23, 26, Ch. 115, L. 1943), the "Uniform Stock Trans-

fer Act," were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

15-652. Definitions. In this act, unless the context otherwise requires:

(a) "Assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust, or other instrument of transfer.

(b) "Claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir, or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on his behalf, and includes a claim that the transfer would be in breach of fiduciary duties.

(c) "Corporation" means a private or public corporation, association or trust issuing a security.

(d) "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian, or nominee.

(e) "Person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(f) "Security" includes any share of stock, bond, debenture, note or other security issued by a corporation which is registered as to ownership on the books of the corporation.

(g) "Transfer" means a change on the books of a corporation in the registered ownership of a security.

(h) "Transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation.

History: En. Sec. 1, Ch. 101, L. 1963.

In New Mexico this Uniform Act was repealed by enactment of the Uniform Commercial Code.

NOTE.—Uniform State Law. Sections 15-652 through 15-662 constitute the "Uniform Act for Simplification of Fiduciary Security Transfers" as promulgated by the National Conference of Commissioners on Uniform State Laws in 1958 and adopted in the states of Alabama, Arizona, California, Colorado, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

Title of Act

An act to adopt the Uniform Act for Simplification of Fiduciary Security Transfers as promulgated by the national conference of commissioners on uniform state laws in 1958; establishing a mode for transfer of securities held by fiduciaries; providing evidence of appointment or incumbency of a fiduciary; providing for the filing of adverse claims; and removing a duty by corporations and transfer agents to inquire into the rightfulness of security transfers by fiduciaries.

15-653. Registration in the name of a fiduciary. A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship; and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security.

History: En. Sec. 2, Ch. 101, L. 1963.

15-654. Assignment by a fiduciary. Except as otherwise provided in this act, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary

(a) may assume without inquiry that the assignment, even though to the fiduciary himself or to his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

(b) may assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or the assignment, even though the record or document is in its possession.

History: En. Sec. 3, Ch. 101, L. 1963.

15-655. Evidence of appointment or incumbency. A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

(a) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty (60) days before the transfer; or

(b) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under this subsection provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

History: En. Sec. 4, Ch. 101, L. 1963.

15-656. Adverse claims. (a) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner, and the issue of which the security is a part, provides an address for communications directed to the claimant and is received before the transfer. Nothing in this act relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in subsection (b).

(b) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice it shall withhold the transfer for thirty (30) days after the mailing and shall then make the transfer unless restrained by a court order.

History: En. Sec. 5, Ch. 101, L. 1963.

15-657. Non-liability of corporation and transfer agent. A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by this act.

History: En. Sec. 6, Ch. 101, L. 1963.

15-658. Non-liability of third persons. (a) No person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary, including a person who guarantees the signature of the fiduciary, is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

(b) If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this act incurs no liability.

(c) This section does not impose any liability upon the corporation or its transfer agent.

History: En. Sec. 7, Ch. 101, L. 1963.

15-659. Territorial application. (a) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized.

(b) This act applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposition, assignment, or transfer of a security by or to a fiduciary and of a person who guarantees in this state the signature of a fiduciary in connection with such a transaction.

History: En. Sec. 8, Ch. 101, L. 1963.

15-660. Tax obligations. This act does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession, or other taxes imposed by the laws of this state.

History: En. Sec. 9, Ch. 101, L. 1963.

15-661. Uniformity of interpretation. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 10, Ch. 101, L. 1963.

15-662. Short title. This act may be cited as the "Uniform Act for the Simplification of Fiduciary Security Transfers."

History: En. Sec. 11, Ch. 101, L. 1963.

Repealing Clause

Section 12 of Ch. 101, Laws 1963 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 13 of Ch. 101, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

CHAPTER 8—POWERS AND DUTIES OF CORPORATIONS

15-801. (5994) Powers of corporations.**Payment for Stock**

Payments of money made to a television cable corporation, upon the issuance of stock to Class B stockholders, which were not made for stock but rather for services rendered and to be rendered by the corporation, constituted ordinary taxable income under section 61 (a) of the Internal Revenue Code of

1954. The purported stock purchases were in fact payments required of subscribers in consideration of such services. *Community T. V. Assn. of Havre v. United States*, 203 F Supp 270, 276.

References

Carnahan v. United States, 188 F Supp 461, 466.

15-808. (6000) Corporations to organize within one year, etc.**Action by State**

This section limits its effect to an action by the state at the suit of the attorney general. *First Nat. Bank in Billings v. First Bank Stock Corp.*, 306 F 2d 937, 941.

Banks

The provisions of the first sentence of this section are in direct conflict with

the provisions of section 5-207, under which the superintendent of banks is granted power to revoke a bank's certificate, so do not apply to banks. *First Nat. Bank in Billings v. First Bank Stock Corp.*, 197 F Supp 417, 424.

This section is not applicable to banks. *First Nat. Bank in Billings v. First Bank Stock Corp.*, 306 F 2d 937, 941.

15-811. (6003) Annual statement of corporations.**Collateral References**

19 C.J.S. Corporations §§ 895, 896.

CHAPTER 10—CORPORATE RECORDS

Section 15-1001. Corporate records—to consist of what, and how kept.

15-1001. (6008) Corporate records—to consist of what, and how kept.

All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members, or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present, and, in the record of directors' meetings, who absent. If requested by any director, member, or stockholder, the time must be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request, the ayes and noes must be taken on any proposition, and a record thereof made. On a similar request, the protest of any director, member, or stockholder, to any action or proposed action, must be entered in full, and such records must be open to the inspection of any director, member, stockholder, or creditor of the corporation; provided, that in lieu of embracing in the record of stockholders' or members' meetings who were present, a list showing the names of those present at any such meeting, certified by the chairman and secretary thereof, may be filed and kept in the office of the secretary of the corporation. Provided, however, any corporate act to be performed by the directors of a corporation may be performed by resolution with the signed consent of all of the directors of said corporation then living, without a formal meeting

of the directors being held therefor. Such resolution shall be placed in the minute book of the corporation. Provided, further, that any corporate act to be performed by the stockholders of a corporation may be performed by a resolution with the signed consent of all of the stockholders of said corporation (or their proxies or personal representatives), without a formal meeting of the stockholders being held therefor. Such resolution shall be placed in the minute book of the corporation.

History: En. Sec. 540, Civ. C. 1895; re-en. Sec. 3902, Rev. C. 1907; re-en. Sec. 6008, R. C. M. 1921; amd. Sec. 1, Ch. 47, L. 1931; amd. Sec. 1, Ch. 155, L. 1963. Cal. Civ. C. Sec. 377.

provisos and the sentences auxiliary thereto.

Effective Date

Section 2 of Ch. 155, Laws 1963 provided the act should be in effect upon its passage and approval. Approved March 5, 1963.

Amendment

The 1963 amendment added the last two

CHAPTER 11—DISSOLUTION OF CORPORATIONS BY QUO WARRANTO —BY DECREE OF COURT—BY ACT OF DIRECTORS AND BY OTHER METHODS

- Section 15-1101. Dissolution of corporations.
 15-1119. Complaint by shareholders seeking dissolution.
 15-1120. Reasons for involuntary dissolution by court.
 15-1121. Intervention by shareholder or creditor.
 15-1122. Summons—procedure and process.
 15-1123. Appointment of receiver.
 15-1124. Offer to purchase shares of complaining shareholders.
 15-1125. Appraisal of plaintiffs' shares.
 15-1126. Award for plaintiffs' shares.
 15-1127. Election to purchase plaintiffs' shares—refusal—order for delivery.
 15-1128. Court orders for dissolution.
 15-1129. Liberal construction.
 15-1130. Application to existing corporations.
 15-1131. Tax clearance certificate.

15-1101. (6010) Dissolution of corporations. A corporation is dissolved:

1. By expiration of the time limited by its charter provided its corporate existence is not extended in the manner provided by law; or
2. By a judgment of dissolution in the manner provided by sections 93-6401 to 93-6426, governing quo warranto proceedings and in the manner provided by sections 15-1108 to 15-1114, governing voluntary dissolution of corporations by decree of court; or
3. By an act of the legislative assembly; or
4. A corporation which has ceased to transact business and which has no assets may likewise be dissolved by the directors in the manner provided by sections 15-1115 to 15-1118.
5. In the manner provided by sections 15-1119 to 15-1130.

History: En. Sec. 560, Civ. C. 1895; re-en. Sec. 3905, Rev. C. 1907; re-en. Sec. 6010, R. C. M. 1921; amd. Sec. 1, Ch. 8, L. 1931; amd. Sec. 1, Ch. 33, L. 1947;

amd. Sec. 1, Ch. 241, L. 1963. Cal. Civ. C. Sec. 399.

Amendment

The 1963 amendment added clause 5.

15-1102. (6011) Winding up the affairs of and disposing of property, etc.**Suits by Stockholders**

Individuals cannot maintain an action for a corporation on the theory that they are the possible successors to the corpo-

ration's title upon the expiration of the corporate life. *Malcom v. Stondall Land & Investment Co.*, 129 M 142, 284 P 2d 258, 261.

15-1108. (9922) Corporations—how dissolved.**Cross-Reference**

Application of Montana Rules of Civil

Procedure to dissolution proceedings, see Table A, M. R. Civ. P. (sec. 93-2711-7).

15-1119. Complaint by shareholders seeking dissolution. A complaint for the involuntary winding up or dissolution of a corporation (other than banks, public utilities and building and loan associations) may be filed in the district court of any county wherever such corporation maintains an office or does business by the following persons:

1. A shareholder or shareholders who have held not less than twenty-five per cent (25%) of the number of outstanding shares for a period of not less than six (6) months.

2. Any shareholder if the reason for dissolution is that the corporate term has expired, without extension thereof.

This act shall not apply to any corporation whose capital stock is offered to the public or to any corporation whose stock is listed on any established stock exchange.

History: En. 15-1119 by Sec. 2, Ch. 241, L. 1963.

Title of Act

An act to amend Chapter 11 of Title 15 of the Revised Codes of Montana, 1947, by adding sections 15-1119 to 15-1130 both inclusive, Revised Codes of Montana, 1947; relating to the involuntary winding up or dissolution of private corporations created under the laws of Montana upon complaint by a shareholder; providing judicial procedure therefore; providing the grounds and reasons therefore; authorizing appointment of receiver in actions therefore; providing that owners of fifty per cent

(50%) or more of the stock of corporations may avoid dissolution by purchase of shares of complaining stockholder at fair cash value thereof; providing for judicial determination of the fair cash value of stock of corporation; providing act shall be liberally construed; providing manner for winding up or dissolving corporation; making act applicable to existing corporations as well as those created hereafter; repealing all acts or parts of acts in conflict herewith; amending section 15-1101, Revised Codes of Montana, 1947; providing a severability clause; and providing an effective date.

15-1120. Reasons for involuntary dissolution by court. Upon the filing of complaint the court may order involuntary winding up or dissolution of such a corporation when it finds that any one or more of the following reasons exist:

1. The corporation has abandoned its business for more than one (1) year;

2. The corporate powers have been materially impaired by reason of a deadlock between shareholders or between directors;

3. The directors or those in control of the corporation have been guilty of fraud or gross mismanagement;

4. The directors of [or] those in control of the corporation have so oppressed the minority stock interests as to make it unfair to refuse dissolution.

5. The period for which the corporation was formed has terminated by lapse of time without extension thereof.

History: En. 15-1120 by Sec. 3, Ch. 241, L. 1963.

Compiler's Note

The compiler has inserted the bracketed word "or" in subd. 4.

15-1121. Intervention by shareholder or creditor. At any time prior to the trial of the action any shareholder or creditor may intervene therein either as a plaintiff or as a defendant.

History: En. 15-1121 by Sec. 4, Ch. 241, L. 1963.

15-1122. Summons—procedure and process. Summons shall be issued and served as in other civil actions and the rules of procedure and process governing civil actions generally shall apply to complaints filed under the provisions of this act.

History: En. 15-1122 by Sec. 5, Ch. 241, L. 1963.

15-1123. Appointment of receiver. In such actions, the court may appoint a receiver. The appointment of such receiver shall be made in the manner provided by sections 93-4402 to 93-4407, Revised Codes of Montana, 1947.

History: En. 15-1123 by Sec. 6, Ch. 241, L. 1963.

15-1124. Offer to purchase shares of complaining shareholders. In any such suit the holders of fifty per cent (50%) or more of the outstanding shares of the corporation may avoid the appointment of a receiver or the dissolution of the corporation by purchasing, ratably in the proportions of their stock ownership, the shares of stock owned by the complaining shareholders at their fair cash value. Such election shall be made by filing written notice thereof at any time before trial and, if required by the court, by posting a bond fixed by the court in an amount sufficient to protect the rights of said complaining shareholders. Upon filing of such notice the court shall stay the proceeding and shall proceed to ascertain and fix the value of the shares owned by the plaintiffs.

History: En. 15-1124 by Sec. 7, Ch. 241, L. 1963.

15-1125. Appraisal of plaintiffs' shares. The court shall appoint three disinterested commissioners to appraise the fair cash value of the shares owned by plaintiffs and order the matter referred to the commissioners so appointed for the purpose of ascertaining such value. The commissioners shall meet at a time and place fixed by the court and shall hear the evidence of the parties. In determining fair cash value of such stock the commissioners shall not consider any value or depreciation in value attributable to control or lack of control of the corporation.

History: En. 15-1125 by Sec. 8, Ch. 241, L. 1963.

15-1126. Award for plaintiffs' shares. The award of the commissioners shall be in writing and shall separately state:

- (1) The net worth of the assets of the corporation.
- (2) The fair cash value of plaintiff's stock.

History: En. 15-1126 by Sec. 9, Ch. 241, L. 1963.

15-1127. Election to purchase plaintiffs' shares—refusal—order for delivery. Within 60 days after receiving notice of the award, the stockholders electing to purchase plaintiff's stock shall file such notice of election. Payment shall be made in cash or upon such contractual terms as may be ordered or approved by the court. If the purchasers electing to purchase plaintiff's stock shall refuse to enter into a contract containing terms ordered by the court, which contract has been approved by the court, or shall fail to deposit the amount of the award with the clerk of court within such period, a decree shall forthwith be entered winding up and dissolving such corporation. If the plaintiff shall refuse to enter into such contract, a decree shall be entered dismissing the action. The decree may be appealed from as a final judgment.

If such deposit is made plaintiff's stock shall be delivered to the clerk of court properly endorsed for transfer, and the court may order the money and stock delivered to the parties entitled thereto.

History: En. 15-1127 by Sec. 10, Ch. 241, L. 1963.

15-1128. Court orders for dissolution. The court may make such orders for winding up and dissolution of the corporation as justice and equity require, including orders providing for the presentation of claims of creditors, and the barring from participation of creditors and claimants failing to make claims and present proof, as in cases of proceedings for voluntary winding up and dissolution.

History: En. 15-1128 by Sec. 11, Ch. 241, L. 1963.

15-1129. Liberal construction. This act shall be liberally construed in order to achieve substantial justice and safeguard the rights of shareholders and creditors of such corporations.

History: En. 15-1129 by Sec. 12, Ch. 241, L. 1963.

15-1130. Application to existing corporations. Under the power reserved to the legislature of Montana this act shall apply to all existing corporations as well as to those created hereafter.

History: En. 15-1130 by Sec. 13, Ch. 241, L. 1963.

Repealing Clause

Section 14 of Ch. 241, Laws 1963 repealed all acts or parts of acts in conflict therewith.

Separability Clause

Section 15 of Ch. 241, Laws 1963 read "If a part of this act shall be declared to be invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is declared to be invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

ble from the invalid parts remain in effect. If a part of this act is declared to be invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 16 of Ch. 241, Laws 1963 provided the act should be in effect after its passage and approval. Approved March 9, 1963.

15-1131. Tax clearance certificate. No decree of dissolution shall be made and entered by any court, nor shall the clerk of the district court of any county or secretary of state file any such decree, or file any other document by which the term of existence of any taxpayer is terminated, nor shall the secretary of state file any certificate of surrender by a foreign corporation of its right to do intrastate business in the state unless the taxpayer obtains from the state board of equalization and files with said court, clerk of the district court, or secretary of state as part of the original instrument effecting the dissolution or withdrawal, a certificate to the effect (that) the state board of equalization is satisfied from the available evidence that all taxes imposed by Title 84 of the Revised Codes of Montana have been paid. The issuance of the certificate shall not relieve the taxpayer or any individual, bank or corporation from liability for any taxes, penalties, or interest due the state of Montana.

History: En. 15-1119 by Sec. 1, Ch. 59, L. 1963.

Compiler's Note

Section 2 of Ch. 59, Laws 1963 read "This act shall be codified as section 15-1119, R. C. M. 1947." However, Chapter 241, Laws 1963, also enacted a section specifically designated as section 15-1119, and Sec. 14 of Ch. 241 repealed all inconsistent acts. For this reason, and in the interest of a logical arrangement, the compiler has redesignated this section as 15-1131.

Title of Act

An act requiring a corporation to obtain a tax clearance certificate from the state board of equalization before dissolution is allowed and providing that this act shall be codified as section 15-1119, R. C. M. 1947.

Effective Date

Section 3 of Ch. 59, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 21, 1963.

CHAPTER 12—SCOPE OF LAW—LEGISLATURE MAY REPEAL

15-1201. (6012) Scope of corporation laws.

Banks

The requirement of section 15-808 that a corporation "commence the transaction of its business or the construction of its works within one year from the date of its incorporation" is not applicable to banks which are governed by section 5-

207. First Nat. Bank in Billings v. First Bank Stock Corp., 306 F 2d 937, 941.

References

First Nat. Bank in Billings v. First Bank Stock Corp., 197 F Supp 417, 424.

CHAPTER 17—FOREIGN CORPORATIONS

15-1701. (6651) Foreign corporations—requirements, etc.

Citizenship of Qualifying Corporation

A federal district court in Montana had jurisdiction of an action by a Montana resident against a joint venture composed of a New Jersey and an Arizona corporation, each qualified to do business in Montana under sections 15-1701 to 15-1713, since neither corporation became a citizen of Montana by qualifying to do business and consenting to be sued in Montana. Carson Constr. Co. v. Fuller-Webb Constr., 198 F Supp 464, 469.

A corporation engaged in financing mobile homes was not doing business in the state of Montana where there was no evidence that it had any office, place of business or resident agents or employees in Montana; it did not deal directly with any customers or purchasers, but solely with dealers; and this business was conducted by mail pursuant to an agreement reciting that it was made and entered into in Tulsa, Oklahoma. Minnehoma Financial Co. v. Van Oosten, 198 F Supp 200, 204.

Interstate Commerce

Activities of a foreign corporation in Montana which are in interstate commerce are not subject to the provisions of this section. *Union Interchange, Inc. v. Parker*, 138 M 348, 357 P 2d 339, 345; *Minnehoma Financial Co. v. Van Oosten*, 198 F Supp 200, 207.

What Constitutes Doing Business in State

The determination whether plaintiff was doing business in Montana within the purview of this section or was carrying on the business of a real estate broker within the purview of section 66-1903, was a question of law under section 93-2501-2. *Union Interchange, Inc. v. Parker*, 138 M 348, 357 P 2d 339, 343, explained in 198 F Supp 200, 207.

15-1703. (6653) Contracts void if made before compliance, etc.**Enforcement of Contract**

A corporation engaged in financing mobile homes, who was not doing business in the state of Montana, could enforce guaranties of conditional sales con-

tracts, assigned to it by a mobile home dealer in Montana, in Montana. *Minnehoma Financial Co. v. Van Oosten*, 198 F Supp 200, 204.

CHAPTER 18—MERGER OF CORPORATIONS ENGAGED IN PETROLEUM PRODUCTS BUSINESS

Section 15-1801. Oil, gas and other petroleum products corporations may merge or consolidate—agreement for merger or consolidation.

15-1801. Oil, gas and other petroleum products corporations may merge or consolidate—agreement for merger or consolidation. Any one or more corporations engaged in the production, marketing, or refining of oil, gas or other petroleum products or otherwise engaged in the oil, gas or petroleum products business organized under the provisions of the law of this state, or existing thereunder, may consolidate or merge with one (1) or more other like corporations organized under the laws of this or of any other state or states or territory of the United States of America if the laws under which said other corporation or corporations are formed shall permit such consolidation or merger.

The constituent corporations may merge into a single corporation which may be any one of said constituent corporations, or they may consolidate to form a new corporation which may be a corporation of the state of incorporation of any one of said constituent corporations or shall be specified in the agreement hereinafter required. All the constituent corporations shall enter into an agreement in writing which shall prescribe the terms and conditions of the consolidation or merger, the mode of carrying the same into effect, the manner of converting the shares of each of said constituent corporations into shares of the corporation resulting from or surviving such consolidation or merger and such details and provisions as shall be deemed necessary or proper. In case of consolidation to form a new corporation there shall also be set forth in said agreement such other facts as shall then be required to be set forth in certificates of incorporation by the laws that shall govern said resulting corporation and that can be stated in the case of a consolidation.

Said agreement shall be authorized, adopted, approved, signed and acknowledged by each of said constituent corporations in accordance with the laws under which it is formed and in the case of a Montana corporation in the manner provided in section 15-1802. The agreement so authorized,

adopted, approved, signed and acknowledged shall be filed in the office of the secretary of state and a copy of such agreement certified by the secretary of state under the great seal of the state of Montana, shall be filed but need not be recorded in the office of the county clerk of the county in this state wherein such resulting or surviving corporation maintains its principal place of business, if any, and also, in each other county in this state in which such corporation may own real estate, provided, however, that a failure to file such certified copy in the office of any county clerk of any county in this state shall not affect the validity of said merger or consolidation. Said agreement so filed in the office of the secretary of state shall thenceforth be taken and deemed to be the agreement and act of consolidation or merger of said constituent corporations for all purposes of the laws of this state and said consolidation or merger shall take effect as of the date of the filing of said agreement with the secretary of state who shall, at the time of such filing, receive a fee of fifteen dollars (\$15.00) therefor. A copy of such agreement certified to be such by the secretary of state under the great seal of the state of Montana, shall be evidence of such merger or consolidation and of the contents of said agreement.

History: En. Sec. 1, Ch. 295, L. 1947;
amd. Sec. 6, Ch. 117, L. 1961.

Amendment

The 1961 amendment increased the filing fee specified in the last paragraph from \$5.00 to \$15.00.

CHAPTER 19—CONSOLIDATION OR MERGER OF CORPORATIONS

Section 15-1901. Certain corporations may merge or consolidate—agreement for merger or consolidation.

15-1901. Certain corporations may merge or consolidate—agreement for merger or consolidation. Except as otherwise specifically provided by the constitution or existing laws of the state of Montana any one or more corporations organized under the provisions of the law of this state or existing thereunder, may consolidate or merge with one or more other corporations organized under the laws of this or of any other state or states or territory of the United States of America if the laws under which said other corporation or corporations are formed shall permit such consolidation or merger.

The constituent corporations may merge into a single corporation which may be any one of said constituent corporations, or they may consolidate to form a new corporation which may be a corporation of the state of incorporation of any one of said constituent corporations or (as) shall be specified in the agreement hereinafter required. All the constituent corporations shall enter into an agreement in writing which shall prescribe the terms and conditions of the consolidation or merger, the mode of carrying the same into effect, the manner of converting the shares of each of said constituent corporations into shares of the corporation resulting from or surviving such consolidation or merger and such details and provisions as shall be deemed necessary or proper. In case of consolidation to form a new corporation there shall also be set forth in said agreement such other facts as shall then be required to be set forth in certificates of

incorporation by the laws that shall govern said resulting corporation and that can be stated in the case of a consolidation.

Said agreement shall be authorized, adopted, approved, signed and acknowledged by each of said constituent corporations in accordance with the laws under which it is formed and in the case of a Montana corporation in the manner provided in section 15-1902 hereof. The agreement so authorized, adopted, approved, signed and acknowledged shall be filed in the office of the secretary of state and a copy of such agreement certified by the secretary of state under the great seal of the state of Montana, shall be filed but need not be recorded in the office of the county clerk of the county in this state wherein such resulting or surviving corporation maintains its principal place of business, if any, and also, in each other county in this state in which such corporation may own real estate, provided, however, that a failure to file such certified copy in the office of any county clerk of any county in this state shall not effect [affect] the validity of said merger or consolidation. Said agreement so filed in the office of the secretary of state shall thenceforth be taken and deemed to be the agreement and act of consolidation or merger of said constituent corporations for all purposes of the laws of this state and said consolidation or merger shall take effect as of the date of the filing of said agreement with the secretary of state who shall, at the time of such filing, receive a fee of fifteen dollars (\$15.00) therefor. A copy of such agreement certified to be such by the secretary of state under the great seal of the state of Montana, shall be evidence of such merger or consolidation and of the contents of said agreement.

History: En. Sec. 1, Ch. 175, L. 1951;
amd. Sec. 7, Ch. 117, L. 1961.

Amendment

The 1961 amendment adopted in parentheses a bracketed word "as" which the compiler had inserted in the second paragraph; and increased the filing fee in the last paragraph from \$5.00 to \$15.00.

Compiler's Note

The compiler has inserted the bracketed word "affect" in the last paragraph.

CHAPTER 20—SECURITIES ACT OF MONTANA

- Section 15-2001. Office of investment commissioner.
 15-2002. Short title.
 15-2003. Statutory policy.
 15-2004. Definitions.
 15-2005. Fraudulent and other prohibited practices.
 15-2006. Registration of broker-dealers, salesmen, and investment advisers.
 15-2007. Registration of securities.
 15-2008. Registration by notification.
 15-2009. Registration by coordination.
 15-2010. Registration by qualification.
 15-2011. General provisions regarding registration of securities.
 15-2012. Denial, suspension and revocation of registration of securities.
 15-2013. Exempt securities.
 15-2014. Exempt transactions.
 15-2015. Consent to service of process.
 15-2016. Fees.
 15-2017. Misleading filings.
 15-2018. Unlawful representation concerning registration or exemption.
 15-2019. Investigations and subpoenas.
 15-2020. Injunctions.
 15-2021. Criminal liabilities.

- 15-2022. Civil liabilities.
- 15-2023. Judicial review of orders.
- 15-2024. Administration of act.
- 15-2025. Proof of exemption.

15-2001. Office of investment commissioner. The office of the investment commissioner is hereby created, and the state auditor of Montana is hereby made and constituted ex officio investment commissioner.

History: En. Sec. 1, Ch. 251, L. 1961.

Title of Act

An act relating to securities and creating the office of investment commissioner; providing for the administration of the act and prescribing certain powers and duties in connection therewith; providing for the registration of securities; providing for the registration of broker-dealers, salesmen, and investment advisors; exempting certain securities and security transactions from the provisions of the act; providing for consent to service of process; providing for registration fees under the act; providing for investigations; providing for judicial review of orders; defining terms; providing penalties; providing effective date of act; repealing section 66-

2001; section 66-2002, as amended by section 1, chapter 178, laws of Montana, 1957; section 66-2003, as amended by section 2, chapter 178, laws of Montana, 1957; sections 66-2004 through 66-2006; section 66-2007, as amended by section 3, chapter 178, laws of Montana, 1957; sections 66-2008 through 66-2017; section 66-2018, as amended by section 4, chapter 178, laws of Montana, 1957; sections 66-2019 through 66-2022; section 66-2023, as amended by section 5, chapter 178, laws of Montana, 1957; section 66-2024, as amended by section 6, chapter 178, laws of Montana, 1957; sections 66-2025 and 66-2026, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith.

15-2002. Short title. This act may be cited as the "Securities Act of Montana."

History: En. Sec. 2, Ch. 251, L. 1961.

15-2003. Statutory policy. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 3, Ch. 251, L. 1961.

15-2004. Definitions. When used in this act, unless the context otherwise requires:

(1) "Commissioner" means investment commissioner of this state.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but "salesman" does not include an individual who represents an issuer in (a) effecting a transaction in a security exempted by subsections 13(1), (2), (3), (9), (10), or (11) [15-2013(1), (2), (3), (9), (10), or (11)], of this title, (b) effecting transactions exempted by section 14 [15-2014], or (c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. A partner, officer, or director of a broker-dealer or issuer is a "salesman" only if he otherwise comes within this definition.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include (a) a salesman, issuer, bank, savings institution, trust company or insurance company, (b) a

person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee, or (c) a person who has no place of business in this state if during any period of twelve (12) consecutive months he does not direct more than fifteen (15) offers to sell or to buy into this state in any manner to persons other than those specified in clause (b).

(4) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(5) "Investment adviser" means any person who, for compensation, engages in the business of advising others either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include (a) a bank, savings institution, trust company or insurance company; (b) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession; (c) a broker-dealer; (d) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation; (e) a person whose advice, analyses, or reports relate only to securities exempted by subsection 13(1) [15-2013(1)] of this title; (f) a person who has no place of business in this state if (i) his only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (ii) during any period of twelve (12) consecutive months he does not direct business communications into this state in any manner to more than five (5) resident clients other than those specified in clause (i); or (g) such other persons not within the intent of this paragraph as the commissioner may by rule or order designate.

(6) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(7) "Non-issuer" means not directly or indirectly for the benefit of the issuer.

(8) "Person," for the purpose of this act, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where

the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(9) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(10) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility Holding Company Act of 1935," and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after the effective date of this act.

(11) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; pre-organization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money, either in a lump sum, or periodically for life, or some other specified period.

(12) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

History: En. Sec. 4, Ch. 251, L. 1961.

compiled as sections 78a to 78jj, Title 15, U. S. Code.

Compiler's Notes

The Securities Act of 1933, referred to in subd. (10) of this section, is compiled as sections 77a to 77aa, Title 15, U. S. Code.

The Public Utility Holding Company Act of 1935 is compiled as sections 79 to 79z-6, Title 15, U. S. Code.

The Securities Exchange Act of 1934 is

The Investment Company Act of 1940 is compiled as sections 80a-1 to 80a-52, Title 15, U. S. Code.

15-2005. Fraudulent and other prohibited practices. (1) It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly

(a) to employ any device, scheme, or artifice to defraud,

(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in

the light of the circumstances under which they are made, not misleading, or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analysis or reports or otherwise,

(a) to employ any device, scheme, or artifice to defraud the other person, or

(b) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

(3) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides:

(a) that the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(b) that no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(c) that the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change. Clause (a) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment," as used in clause (b), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

History: En. Sec. 5, Ch. 251, L. 1961.

15-2006. Registration of broker-dealers, salesmen, and investment advisers. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under section 14 [15-2014], unless he is registered under this act. It is unlawful for any person to transact business in this state as an investment adviser unless (1) he is so registered under this act, or (2) he is registered as a broker-dealer under this act, or (3) his only clients in this state are investment companies as defined in the Investment Company Act of 1940 or insurance companies.

(2) A broker-dealer, salesman, acting as agents for an issuer or issuers or acting as agents for a broker-dealer in the sale of securities for

an issuer or issuers or investment adviser may apply for registration by filing with the commissioner an application in such form as the commissioner shall prescribe and payment of the fee prescribed in section 16 [15-2016]. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least one (1) year next prior to the date of application for registration. Salesmen shall also file with the commissioner a bond of a surety company duly authorized to transact business in this state. Said bond to be in the sum of five thousand dollars (\$5,000.00), payable to the state of Montana, and conditioned upon the faithful compliance with the provisions of this act, and shall provide that upon failure to so comply the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(3) The application shall contain whatever information the commissioner requires.

(4) If no denial order is in effect and no proceeding is pending under subdivision (8) of this section, registration becomes effective at noon of the thirtieth (30th) day after an application is filed. The commissioner may specify an earlier effective date and he may by order defer the effective date for an additional sixty (60) days; the effective day after the filing of any amendment shall be noon of the thirtieth (30th) day thereafter unless otherwise accelerated by the commissioner.

(5) Registration of a broker-dealer, salesman or investment adviser shall be effective until the first (1st) day of March next following such registration and may be renewed as hereinafter provided. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(6) Registration of a broker-dealer, salesman or investment adviser may be renewed by filing with the commissioner prior to the expiration thereof an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman or investment adviser filed with the commissioner by the applicant, payment of the prescribed fee and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within ninety (90) days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(7) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under section 13(1) [15-2013(1)], as may be prescribed by the commissioner. All records so required shall be preserved for three (3) years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are

subject at any time or from time to time to such reasonable periodic, special or other examinations, within or without this state, by representatives of the commissioner, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors.

(8) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has wilfully violated or wilfully failed to comply with any provision of this act or a predecessor act or any rule or order under this act or a predecessor act;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business, or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past five (5) years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer or salesman, or the substantial equivalent of those terms as defined in this act, or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States Post Office fraud order; but (a) the commissioner may not institute a revocation or suspension proceeding under this clause more than one (1) year from the date of the order relied on, and (b) he may not enter any order under this clause on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the commissioner may not enter an order against a broker-dealer or investment adviser under this clause without a finding of insolvency as to the broker-dealer or investment adviser; or

(i) has not complied with a condition imposed by the commissioner under subdivision (8) of this section, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(j) has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this clause, and he shall vacate any such order when the deficiency has been corrected. The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(9) Upon the entry of the order under subdivision (8) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within fifteen (15) days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within fifteen (15) days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify or vacate the order.

(10) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser or salesman, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

History: En. Sec. 6, Ch. 251, L. 1961.

Compiler's Notes

The Investment Company Act of 1940, referred to in subd. (1) of this section, is compiled as sections 80a-1 to 80a-52, Title 15, U. S. Code.

The Securities Exchange Act of 1934, referred to in subd. (8)(f) of this section, is compiled as sections 78a to 78jj, Title 15, U. S. Code.

15-2007. Registration of securities. It is unlawful for any person to offer to sell any security in this state, except securities exempt under section 13 [15-2013] or when sold in transactions exempt under section 14 [15-2014], unless such security is registered by notification, coordination, or qualification under this act.

History: En. Sec. 7, Ch. 251, L. 1961.

15-2008. Registration by notification. (1) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under this act:

(a) any security whose issuer and any predecessors have been in continuous operation for at least five (5) years if:

(1) there has been no default during the current fiscal year or within the three (3) preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend provision; and

(2) the issuer and any predecessors during the past three (3) fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, which are applicable to all securities without a fixed maturity or a fixed interest or dividend pro-

vision and which (i) equal at least five per cent (5%) of the amount of securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed (as measured by the maximum offering price or the market price on a day selected by the registrant within thirty (30) days before the date of filing the registration statement, whichever is higher, or if there is neither a readily determinable market price nor an offering price, book value on a day selected by the registrant within ninety (90) days of the date of filing the registration statement), or (ii) if the issuer and any predecessors have not had any securities without a fixed maturity or a fixed interest or dividend provision outstanding for three (3) full fiscal years, equal at least five per cent (5%) of the amount (as measured by the maximum public offering price) of such securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this state) are issued;

(b) any security (other than a certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease) registered for non-issuer distribution of any security of the same class has ever been registered under this act or a predecessor act, or the security being registered was originally issued pursuant to an exemption under this act or a predecessor act.

(2) A registration statement by notification shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 16 [15-2016]:

(a) A statement demonstrating eligibility for registration by notification.

(b) With respect to the issuer: its name, address, and form of organization; the state (or foreign jurisdiction) and the date of its organization; and the general character and location of its business.

(c) A description of the securities being registered.

(d) Total amount of securities to be offered and amount of securities to be offered in this state.

(e) The price at which the securities are to be offered for sale to the public; any variation therefrom at which any portion of the offering is to be made to any persons, other than as underwriting and selling discounts or commissions; and the estimated maximum aggregate underwriting and selling discounts or commissions and finders' fees (including cash, securities, or anything else of value).

(f) Names and addresses of the managing underwriters and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.

(g) Description of any security options outstanding or to be created in connection with the offering.

(h) Any adverse order, judgment or decree previously entered in connection with the offering by any court or the United States securities and exchange commission.

(i) A copy of any offering circular or prospectus to be used in connection with the offering.

(j) In the case of any registration under section 8(b) relating to non-issuer distribution which does not also satisfy the conditions of section 8(1)(a), a balance sheet of the issuer as of a date within four (4) months prior to the filing of the registration statement, and a summary of earnings for each of the two (2) fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than two (2) years.

(k) A consent to service of process meeting the requirements of section 15 [15-2015] of this act.

(3) If no stop order is in effect and no proceeding is pending under sections 12 [15-2012] and 12(3) [15-2012(3)], a registration statement by notification automatically becomes effective at three (3) o'clock Mountain Standard Time in the afternoon of the second (2nd) full business day after the filing of the registration statement or the last amendment, or at such earlier time as the commissioner determines.

History: En. Sec. 8, Ch. 251, L. 1961.

15-2009. Registration by coordination. (1) Any security for which a registration statement has been filed under the Securities Act of 1933, or any securities for which filings have been made pursuant to regulation A or regulation E, and amendments thereto, of the general rules and regulations of the United States securities and exchange commission, adopted pursuant to subsection (b) of section 3 of said Securities Act of 1933, in connection with the same offering may be registered by coordination. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 16 [15-2016]:

(a) Three (3) copies of the prospectus or offering circular and letter of notification filed under the Securities Act of 1933 or the general rules and regulations thereunder, together with all amendments thereto.

(b) The amount of securities to be offered in this state.

(c) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed.

(d) Any adverse order, judgment or decree previously entered in connection with the offering by any court or the securities and exchange commission.

(e) If the commissioner by rule or otherwise requires, a copy of the articles of incorporation and by-laws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(f) If the commissioner requests, any other information, or copies of any other documents, filed under the Securities Act of 1933;

(g) An undertaking to forward promptly all amendments to the federal registration statement or offering circular and letter of notification, other than an amendment which merely delays the effective date; and

(h) A consent to service of process meeting the requirements of section 15 [15-2015] of this act.

(2) A registration statement by coordination under section 9 [15-2009] automatically becomes effective at the moment the federal registration statement or other filing becomes effective if all the following conditions are satisfied:

(a) No stop order is in effect and no proceeding is pending under sections 12 [15-2012] and 12(3) [15-2012(3)],

(b) The registration statement has been on file with the commissioner for at least ten (10) days, and

(c) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two (2) full business days or such shorter period as the commissioner permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the commissioner of the date and time when the federal registration statement or other filings became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(3) Upon failure to receive the required notification and post-effective amendment with respect to the price amendment referred to in subdivision (2) of this section, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with subdivision (2) of this section, if he promptly notifies the registrant of the issuance of the order. If the registrant proves compliance with the requirements as to notice and post-effective amendment, the stop order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in subdivisions (2)(b) and (2)(c) of this section. If the federal registration statement or other filing becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement or other filing is expected to become effective the commissioner shall promptly advise the registrant whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under sections 12 [15-2012] and 12(3) [15-2012(3)]; but this advice by the commissioner does not preclude the institution of such a proceeding at any time.

History: En. Sec. 9, Ch. 251, L. 1961.

Compiler's Note

The Securities Act of 1933, referred to

in subd. (1) of this section, is compiled as sections 77a to 77aa, Title 15, U. S. Code.

15-2010. Registration by qualification. (1) Any security may be registered by qualification. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 16 [15-2016].

(a) With respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business and a description of its physical properties and equipment.

(b) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past five (5) years; the amount of securities of the issuer held by him as of a specified date within ninety (90) days of the filing of the registration statement; the remuneration paid to all such persons in the aggregate during the past twelve (12) months, and estimated to be paid during the next twelve (12) months, directly or indirectly, by the issuer (together with all predecessors, parents and subsidiaries).

(c) With respect to any person not named in subdivision (b), owning of record, or beneficially if known, ten per cent (10%) or more of the outstanding shares of any class of equity security of the issuer: the information specified in subdivision (b) other than his occupation.

(d) With respect to every promotor, not named in subdivision (b), if the issuer was organized within the past three (3) years: the information specified in subdivision (b), any amount paid to him by the issuer within that period or intended to be paid to him, and the consideration for any such payment.

(e) The capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two (2) years or is obligated to issue any of its securities.

(f) The kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price and any variation therefrom at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions; the estimated aggregate underwriting and selling discounts, commissions and other promotional fees (including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering); the estimated amounts of other selling expenses, and legal, engineering, and accounting expenses to be incurred by the issuer in connection with the offering; the name and address of every underwriter and every recipient of a promotional fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet

been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.

(g) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the amounts of any funds to be raised from other sources to achieve the purposes stated, and the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price.

(h) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subdivisions (b), (c), (d), (e), or (g) and by any person who holds or will hold ten per cent (10%) or more in the aggregate of any such options.

(i) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed.

(j) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission; a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities).

(k) A copy of any prospectus or circular intended as of the effective date to be used in connection with the offering.

(l) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and by-laws, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered.

(m) A signed or conformed copy of an opinion of counsel, if available, as to the legality of the security being registered.

(n) A balance sheet of the issuer of a date within four (4) months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three (3) fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three (3) years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant.

(o) A consent to service of process meeting the requirements of section 15 [15-2015] of this act.

(2) In the case of a non-issuer distribution, information may not be required under section 10 [15-2010] unless it is known to the person filing the registration statement or to the persons on whose behalf the distri-

bution is to be made, or can be furnished by them without unreasonable effort or expense.

(3) A registration statement by qualification under section 10 [15-2010] becomes effective when the commissioner so orders. The commissioner may require as a condition of registration under this section that a prospectus containing any designated part of the information specified in section 10 [15-2010] be sent or given to each person to whom an offer is made before or concurrently with (1) the first (1st) written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution, (2) the confirmation of any sale made by or for the account of any such person, (3) payment pursuant to any such sale, or (4) delivery of the security pursuant to any such sale, whichever first occurs; but the commissioner shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations thereunder.

History: En. Sec. 10, Ch. 251, L. 1961.

in subd. (3) of this section, is compiled as sections 77a to 77aa, Title 15, U. S. Code.

Compiler's Note

The Securities Act of 1933, referred to

15-2011. General provisions regarding registration of securities. (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. Any document filed under this act or a predecessor act within five (5) years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(2) The commissioner may require as a condition of registration by qualification or coordination (1) that any security issued within the past three (3) years or to be issued to a promotor for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and (2) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The commissioner may determine the conditions of any escrow or impounding required hereunder but he may not reject a depository solely because of location in another state.

(3) When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered or by any registered broker-dealer. Every registration shall remain effective until revoked by the commissioner or until terminated upon request of the registrant with the consent of the commissioner; however, said registration shall be automatically suspended upon a stop order or suspension proceedings being instituted

by the Securities and Exchange Commission relative to said securities, and shall continue suspended so long as such proceedings are pending and until the registration or filing with the Securities and Exchange Commission is effective. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any non-issuer transaction. A registration statement which has become effective may not be withdrawn for one (1) year from its effective date if any securities of the same class are outstanding.

(4)(a) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which (a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the Investment Company Act of 1940, or (b) are being offered and sold directly by or for the account of the issuer.

(b) During the period of public offering in the initial distribution of securities registered under the provisions of this act by notification or qualification, financial data or statements corresponding to those required under the provisions of sections 8(2) and 10 [15-2008(2) and 15-2010], and to the issuer's fiscal year, shall be filed with the commissioner annually, not less than ninety (90) days after the end of each such year. If such statements are not certified the commissioner may verify them by examining the issuer's books and records.

History: En. Sec. 11, Ch. 251, L. 1961;
amd. Sec. 1, Ch. 71, L. 1963.

Compiler's Note

The Investment Company Act of 1940, referred to in subd. (4)(a) of this section, is compiled as sections 80a-1 to 80a-52, Title 15, U. S. Code.

Amendment

The 1963 amendment added to the second sentence of subd. (3) the clause following the semicolon and providing for automatic suspension of registration.

Effective Date

Section 2 of Ch. 71, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 25, 1963.

15-2012. Denial, suspension and revocation of registration of securities.

(1) The commissioner may issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds that the order is in the public interest and that:

(a) the registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) any provision of this act or any rule, order, or condition lawfully imposed under this act has been wilfully violated, in connection with the offering by (a) the person filing the registration statement, (b) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person

filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (c) any underwriter;

(c) the security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; but (a) the commissioner may not institute a proceeding against an effective registration statement under this clause more than one (1) year from the date of the injunction relied on, and (b) he may not enter an order under this clause on the basis of an injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for an order under this section;

(d) the issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(e) the offering has worked or tended to work a fraud upon purchasers or would so operate;

(f) when a security is sought to be registered by notification, it is not eligible for such registration;

(g) when a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by section 9(g) [15-2009(g)];

(h) the applicant or registrant has failed to pay the proper registration fee; but the commissioner may enter only a denial order under this subsection and he shall vacate any such order when the deficiency has been corrected, or

(i) the offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options.

(2) The commissioner may not enter a stop order against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective.

(3) Upon the entry of an order under subdivision (1) of this section, the commissioner shall promptly notify the issuer of the securities and the applicant or registrant that an order has been entered and of the reasons therefor and that if requested by the issuer or registrant within fifteen (15) days after the receipt of the commissioner's notification the matter will be set promptly down for hearing. If no hearing is requested within fifteen (15) days and none is ordered by the commissioner the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing may affirm, modify or vacate the order.

History: En. Sec. 12, Ch. 251, L. 1961.

15-2013. Exempt securities. Sections 7 through 12 [15-2007 through 15-2012], inclusive, of this act shall not apply to any of the following securities:

(1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state,

or any agency or corporate or other instrumentality of one (1) or more of the foregoing; or any certificate of deposit for any of the foregoing.

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one (1) or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor.

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized or chartered as such and under the jurisdiction and supervision of the superintendent of banks of any state.

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state.

(5) Any insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the supervision of the insurance commissioner.

(6) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state.

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (a) subject to the jurisdiction of the interstate commerce commission; (b) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act; (c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or (d) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility, if other securities issued by such railroad or public utility would be exempt under this subsection.

(8) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, or any other stock exchange registered with the federal securities and exchange commission and approved by the commissioner; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing.

(9) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes.

(10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current trans-

action, and which evidences an obligation to pay cash within nine (9) months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal, when such commercial paper is sold to the banks or insurance companies.

(11) Any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan.

History: En. Sec. 13, Ch. 251, L. 1961.

Act of 1935, referred to in subd. (7) of this section, is compiled as sections 79 to 79z-6, Title 15, U. S. Code.

Compiler's Note

The Public Utility Holding Company

15-2014. Exempt transactions. Except as hereinafter in this section expressly provided, sections 6 through 12 [15-2006 through 15-2012] inclusive of this act shall not apply to any of the following transactions:

(1) Any isolated transaction, whether effected through a broker-dealer or not.

(2) Any non-issuer distribution of an outstanding security by a registered broker-dealer if (a) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen (18) months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or (b) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three (3) preceding fiscal years, or during the existence of the issuer and any predecessors if less than three (3) years, in the payment of principal, interest, or dividends on the security.

(3) Any non-issuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period.

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

(5) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator, in the performance of his official duties as such.

(6) Any transaction executed by a bona fide pledgee without any purpose of evading this act.

(7) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

(8) Any transaction pursuant to an offer directed by the offerer to not more than ten (10) persons (other than those designated in subsection (7)) in this state during any period of twelve (12) consecutive months, whether or not the offerer or any of the offerees is then present in this state, if (a) the seller reasonably believes that all the buyers are purchas-

ing for investment, and (b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer.

(9) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten (10), and (c) no payment is made by any subscriber.

(10) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, non-transferable warrants, or transferable warrants exercisable within not more than ninety (90) days of their issuance, if (a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state, or (b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either (a) or (b) of this subsection.

(11) Any offer (but not a sale) of a security for which registration statements have been filed under both this act and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act.

(12) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock.

(13) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation or sale of assets.

The commissioner may by order deny or revoke the exemption specified in subsection (2) with respect to a specific security. Upon the entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within fifteen (15) days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated this act by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the order.

History: En. Sec. 14, Ch. 251, L. 1961.

Compiler's Notes

The Investment Company Act of 1940, referred to in subd. (7) of this section, is compiled as sections 80a-1 to 80a-52, Title 15, U. S. Code.

The Securities Act of 1933, referred to in subd. (11) of this section, is compiled as sections 77a to 77aa, Title 15, U. S. Code.

15-2015. Consent to service of process. Every applicant for registration as a broker-dealer or investment adviser or salesman under this act, and every issuer which proposes to register and offer a security in this state through any person acting on an agency basis in the common law sense, shall file with the commissioner, in such form as he prescribes, an irrevocable consent appointing the commissioner and his successors in office to be the attorney of the applicant to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or its or his successor, executor or administrator which arises under this act or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at its or his last address on file with the commissioner, and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

History: En. Sec. 15, Ch. 251, L. 1961; amd. Sec. 1, Ch. 105, L. 1963.

first sentence for "offer a security in this state."

Amendment

The 1963 amendment substituted "register and offer a security in this state through any person acting on an agency basis in the common law sense" in the

Effective Date

Section 2 of Ch. 105, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

15-2016. Fees. The following fees shall be paid in advance under the provisions of this act:

(1) For the registration of securities by notification or coordination or qualification, there shall be paid to the commissioner for the first year of registration a registration fee of one hundred dollars (\$100.00) for the first one hundred thousand dollars (\$100,000.00) of initial issue, or portion thereof in this state, based on offering price; plus one-twentieth (1/20th) of one per cent (1%) for any excess over one hundred thousand dollars (\$100,000.00), with a maximum of one thousand dollars (\$1,000.00).

Each year thereafter that a registration remains in effect for securities with respect to which reports are required to be filed under subsection (4)(a) of section 11 [15-2011], an additional registration fee shall be paid to the commissioner to be computed at one-twentieth (1/20th) of one per cent (1%) of the aggregate offering price of such securities which are to be offered in this state during that year, even though the maximum fee was paid the preceding year. In no event shall the additional registration fee be less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00). The registration statement for such securities may be amended to increase the amount of securities to be offered. When an application for registration of securities is denied or withdrawn the commissioner shall retain fifty dollars (\$50.00) of the fee.

(2) For filing an annual statement, the fee shall be ten dollars (\$10.00).

(3) For registration of a broker-dealer or investment adviser, the fee shall be one hundred dollars (\$100.00) for original registration and one hundred dollars (\$100.00) for each annual renewal thereof. When an application is denied or withdrawn the commissioner shall retain one-half ($\frac{1}{2}$) of the fee.

(4) For registration of a salesman, the fee shall be ten dollars (\$10.00) for original registration with each employer; ten dollars (\$10.00) for each annual renewal. When an application is denied or withdrawn the commissioner shall retain one-half ($\frac{1}{2}$) of the fee.

(5) For certified copies of any documents filed with the commissioner, the fee shall be the cost to the department.

History: En. Sec. 16, Ch. 251, L. 1961.

15-2017. Misleading filings. It is unlawful for any person to knowingly make or cause to be made, in any document filed with the commissioner or in any proceeding under this act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

History:* En. Sec. 17, Ch. 251, L. 1961.

15-2018. Unlawful representation concerning registration or exemption. Neither the fact that an application for registration under section 6(2) [15-2006(2)], a registration statement under sections 8, 9 or 10 [15-2008, 15-2009 or 15-2010] has been filed, nor the fact that a person or security is effectively registered, constitutes a finding by the commissioner that any document filed under this act is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits of qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with this section.

History: En. Sec. 18, Ch. 251, L. 1961.

15-2019. Investigations and subpoenas. (1) The commissioner in his discretion (1) may make such public or private investigations or examinations within or without this state as he deems necessary to determine whether any registration should be granted, denied or revoked or whether any person has violated or is about to violate any provision of this act or any rule or order hereunder, or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder, (2) may require or permit any person to file a statement in writing, under oath or otherwise as the commissioner may determine, as to all the facts and circumstances concerning the matter to be investigated, and (3) may publish information concerning any violation of this act or any rule or order hereunder.

(2) For the purpose of any investigation or proceeding under this act, the commissioner or any officer designated by him may administer oaths

and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(a) In case of contumacy by, or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring him to appear before the commissioner, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question; and any failure to obey the order of the court may be punished by the court as a contempt of court.

(b) No person is excused from attending and testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by him, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

History: En. Sec. 19, Ch. 251, L. 1961.

15-2020. Injunctions. Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, he may in his discretion bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond.

History: En. Sec. 20, Ch. 251, L. 1961.

15-2021. Criminal liabilities. (1) Any person who wilfully violates any provision of this act except section 17 [15-2017], or who wilfully violates any rule or order under this act, or who wilfully violates section 17 [15-2017] knowing the statement made to be false or misleading in any material respect, shall upon conviction be fined not more than five thousand dollars (\$5,000.00) or imprisoned not more than three (3) years, or both; however, in the event the person so convicted has been previously convicted of a felony in any way involving securities, imprisonment hereunder for not less than one (1) year shall be mandatory. No indictment or information may be returned under this act more than five (5) years after the alleged violation.

(2) The commissioner may refer such evidence as may be available concerning violations of this act or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, who may in his discretion, with or without such a reference, institute the appropriate criminal proceedings under this act.

(3) Nothing in this act limits the power of the state to punish any person for any conduct which constitutes a crime.

History: En. Sec. 21, Ch. 251, L. 1961.

15-2022. Civil liabilities. (1) Any person who offers or sells a security in violation of any provisions of sections 7 through 10 [15-2007 through 15-2010] of this chapter or offers or sells a security by means of fraud or misrepresentation is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six per cent (6%) per annum from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less (a) the value of the security when the buyer disposed of it and (b) interest at six per cent (6%) per annum from the date of disposition.

(2) Every person who directly or indirectly controls a seller liable under subsection (1), every partner, officer or director (or person occupying a similar status or performing similar functions) or employee of such a seller, and every broker-dealer or salesman who participates or materially aids in the sale is liable jointly and severally with and to the same extent as the seller, if the non-seller knew or in the exercise of reasonable care could have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution among the several persons so liable.

(3) Any tender specified in this section may be made at any time before entry of judgment. A cause of action under this statute survives the death of any person who might have been a plaintiff or a defendant. No person may sue under this section more than two (2) years after the contract of sale. No person may sue under this section (a) if the buyer has received a written offer at a time when he owned the security, to refund the consideration paid together with interest at six per cent (6%) per annum from the date of payment, less the amount of any income received on the security, and he failed to accept the offer within thirty (30) days of its receipt, or (b) if the buyer has received a written offer at a time when he did not own the security in the amount that would be recoverable under section 22(1) [(1) of this section] of this title upon a tender less (1) the value of the security when the buyer disposed of it and (2) interest at six per cent (6%) per annum from the date of disposition.

(4) No person who has made or engaged in the performance of any contract in violation of any provision of this act or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance

was in violation, may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this act or any rule or order hereunder is void as against public policy and in the public interest.

History: En. Sec. 22, Ch. 251, L. 1961.

15-2023. Judicial review of orders. Any person aggrieved by a final order of the commissioner may obtain a review of the order in any court of competent jurisdiction by filing in court, within sixty (60) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the commissioner, and thereupon the commissioner shall certify and file in court a copy of the filing, testimony, and other evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. The findings of the commissioner as to the facts, if supported by creditable evidence, are conclusive, unless appealed from. If either party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for failure to adduce the evidence in the hearing before the commissioner, the court may order the taking of additional evidence in such manner and upon such conditions as the court may consider proper. The commencement of proceedings under this action does not, unless specifically ordered by the court, operate as a stay of the commissioner's order.

History: En. Sec. 23, Ch. 251, L. 1961.

15-2024. Administration of act. (1) The administration of the provisions of this act shall be under the general supervision and control of the state auditor, the ex officio investment commissioner. The commissioner may from time to time make, amend, and rescind such rules and forms as are necessary to carry out the provisions of this act. No rule or form may be made unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this act. In prescribing rules and forms the commissioner may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of this act to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(2) Any issuer or broker-dealer who is investigated or examined in connection with a registration under this act shall reimburse the commissioner, or any of his duly authorized agents, officers or employees for actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners, as necessarily incurred on account of the examination, all at reasonable rates customary therefore and as established and adopted by the commissioner, upon the effective date of this act and annually thereafter, upon presentation of a detailed account of such charges and expenses by the commissioner or pursuant to his

written authorization. No person shall pay and no examiner shall accept any additional emolument on account of any such examination.

The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received hereunder.

If any issuer or broker-dealer fails to pay the charges and expenses referred to above the same shall be paid out of the funds of the commissioner in the same manner as other disbursements of such funds. The amount so paid shall be a first lien upon all of the assets and property in this state of such issuer or broker-dealer, and may be recovered by suit by the attorney general on behalf of the state of Montana, and restored to the appropriate fund. Failure of such issuer or broker-dealer to pay such charges and expenses shall also work a forfeiture of his or its right to do business in this state under this act.

(3) It is unlawful for the commissioner or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. No provision of this act authorizes the commissioner or any of his officers or employees to disclose any such information or the fact that any investigation is being made, except among themselves or when necessary or appropriate in a proceeding or investigation under this act.

(4) No provision of this act imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the commissioner, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(5) Every hearing in an administrative proceeding shall be public unless the commissioner in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.

(6) A document is filed when it is received by the commissioner. The commissioner shall keep a register of all applications for registration and registration statements which are or have ever been effective under this act and all denial, suspension, or revocation orders which have ever been entered under this act. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules as the commissioner prescribes.

(7) Upon request and at such reasonable charges as he prescribes, the commissioner shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this act, any copy so certified is prima facie evidence of the contents of the entry or document certified.

History: En. Sec. 24, Ch. 251, L. 1961; amd. Sec. 71, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the second paragraph of subsection (2) for a paragraph reading, "There is hereby cre-

ated in the state treasury a special fund to be known as the 'Investment Department Examinations Revolving Fund.' The commissioner shall pay to the state treasurer to the credit of this special fund all moneys received hereunder. This fund shall be used only for or toward payment

of travel, living allowance and other expenses incurred by the commissioner and his examiners in the making of examinations under this code, and the compensation of such examiners, upon such bases as the commissioner may fix for the purposes of this section. In lieu of deposit thereof in such fund, the commissioner

may give written authorization for payment, by the person examined, of such travel expenses and living allowance direct to the examiner. Any other law of this state to the contrary notwithstanding, the travel expense and living allowance of examiners shall be as fixed by the commissioner pursuant to this section."

15-2025. Proof of exemption. In any proceeding under this act, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

History: En. Sec. 25, Ch. 251, L. 1961.

Permits under Prior Law

Section 26 of Ch. 251, Laws 1961, provided for continuation of permits issued under prior law, as follows: "All effective permits issued under prior law relating to the sale of any security and all conditions imposed upon such permits shall remain in effect so long as they would have remained in effect had they become effective under this act subject, however, to the payment on September 1, 1961 by the issuer of such securities of a renewal registration fee required by section 16 [15-2016] of this act. All stockbrokers and salesmen registered under prior law on the effective date of this act shall be deemed duly registered under and subject to the provisions of this act, such registration to expire on March 1, 1962 and to be subject to renewal as provided in this act."

Separability Clause

Section 27 of Ch. 251, Laws 1961 read "Constitutionality. If any part or parts of this act shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act. The legislature hereby declares that it would have passed the remaining parts

of this act if it had known that such part or parts thereof would be declared unconstitutional."

Repealing Clause

Section 28 of Ch. 251, Laws 1961 read "That section 66-2001; section 66-2002, as amended by section 1, Chapter 178, Laws of Montana, 1957; section 66-2003, as amended by section 2, Chapter 178, Laws of Montana, 1957; sections 66-2004 through 66-2006; section 66-2007, as amended by section 3, Chapter 178, Laws of Montana, 1957; sections 66-2008 through 66-2017; section 66-2018, as amended by section 4, Chapter 178, Laws of Montana, 1957; sections 66-2019 through 66-2022; section 66-2023, as amended by section 5, Chapter 178, Laws of Montana, 1957; section 66-2024, as amended by section 6, Chapter 178, Laws of Montana, 1957; sections 66-2025 and 66-2026, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith are hereby repealed."

Effective Date

Section 29 of Ch. 251, Laws 1961 read "This act shall be in full force and effect from and after July 1, 1961."

CHAPTER 21—PROFESSIONAL SERVICE CORPORATIONS

- Section 15-2101. Legislative intent.
 15-2102. Title.
 15-2103. Definitions.
 15-2104. Previously existing corporations.
 15-2105. Purpose for which incorporated.
 15-2106. How service rendered.
 15-2107. Relationship to person served.
 15-2108. Limitation on other business.
 15-2109. Restrictions on shareholders.
 15-2110. Disqualification of officers, employees or shareholders.
 15-2111. Transfer of shares.
 15-2112. Name.
 15-2113. Board of directors.
 15-2114. Application of corporation law.
 15-2115. Annual report.
 15-2116. Savings clause.

15-2101. Legislative intent. It is the legislative intent to provide for the incorporation of an individual or group of individuals to render the

same professional service to the public for which such individuals are required by law to be licensed or to have obtained other legal authorization.

History: En. Sec. 3, Ch. 161, L. 1963.

15-2102. Title. This act may be cited as "The Professional Service Corporation Act."

History: En. Sec. 4, Ch. 161, L. 1963.

15-2103. Definitions. As used in this act, the following words shall have the meaning indicated:

(1) The term "professional service" means any professional service rendered by attorneys, certified public ~~account~~ {accountants}, public accountants, chiropractors, dentists, osteopaths, doctors of medicine, chiroprodists, architects, veterinarians, optometrists, and professional engineers.

(2) The term "professional corporation" means a corporation which is organized under this act for the sole and specific purpose of rendering professional service, and which has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the corporation.

History: En. Sec. 5, Ch. 161, L. 1963.

15-2104. Previously existing corporations. This act shall not apply to any individuals or groups of individuals within this state who prior to the passage of this act were permitted to organize a corporation and perform personal services to the public by the means of a corporation, and this act shall not apply to any corporations organized by such individual or group of individuals prior to the passage of this act; provided, however, any such individual or group of individuals or any such corporation may bring themselves and such corporation within the provisions of this act by amending the articles of incorporation in such a manner so as to be consistent with all the provisions of this act and by affirmatively stating in the amended articles of incorporation that the shareholders have elected to bring the corporation within the provisions of this act.

History: En. Sec. 6, Ch. 161, L. 1963.

15-2105. Purpose for which incorporated. An individual or group of individuals duly licensed or otherwise legally authorized to render the same professional services within this state may organize and become a shareholder or shareholders of a professional corporation for pecuniary profit under the provisions of the corporation act of Montana for the sole and specific purpose of rendering the same and specific professional service.

History: En. Sec. 7, Ch. 161, L. 1963.

15-2106. How service rendered. No corporation organized and incorporated under this act may render professional services except through its officers, employees and agents who are duly licensed or otherwise legally authorized to render such professional services within this state; provided, however, this provision shall not be interpreted to include in the term "employee" as used herein clerks, secretaries, bookkeepers, technicians and other assistants who are not usually and ordinarily considered by cus-

tom and practice to be rendering professional services to the public for which a license or other legal authorization is required.

History: En. Sec. 8, Ch. 161, L. 1963.

15-2107. Relationship to person served. Nothing contained in this act shall be interpreted to abolish, repeal, modify, restrict or limit the law or professional ethics now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional service and to the standards for professional conduct. Any officer, shareholder, agent or employee or a corporation organized under this act shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him, or by any person under his direct supervision and control, while rendering professional services on behalf of the corporation to the person for whom such professional services were being rendered, and the corporation shall also be liable for any negligent or wrongful acts or misconduct committed by any of its officers, shareholders, agents or employees while they are engaged on behalf of the corporation in the rendering of professional services.

History: En. Sec. 9, Ch. 161, L. 1963.

15-2108. Limitation on other business. No corporation organized under this act shall engage in any business other than the rendering of the professional services for which it was specifically incorporated; provided, however, nothing in this act or in any other provisions of existing law applicable to corporations shall be interpreted to prohibit such corporation from investing its funds in real estate, mortgages, stocks, bonds or any other type of investments, or from owning real or personal property necessary for the rendering of professional services.

History: En. Sec. 10, Ch. 161, L. 1963.

15-2109. Restrictions on shareholders. No corporation organized under the provisions of this act may issue any of its capital stock to anyone other than an individual who is duly licensed or otherwise legally authorized to render the same specific professional services as those for which the corporation was incorporated. No individual shall hold stock or in any way have any interest in more than one (1) corporation organized under this act. No shareholder of a corporation organized under this act shall enter into a voting trust agreement or any other type agreement vesting another person with the authority to exercise the voting power of any or all of his stock.

History: En. Sec. 11, Ch. 161, L. 1963.

15-2110. Disqualification of officers, employees or shareholders. If any officer, shareholder, agent or employee of a corporation organized under this act who has been rendering professional service to the public becomes legally disqualified to render such professional services within this state, he shall sever all employment with, and financial interests in, such corporation forthwith. A corporation's failure to require compliance with this provision shall constitute a ground for the forfeiture of its articles of incorporation and its dissolution. When a corporation's failure to comply

with this provision is brought to the attention of the office of the secretary of state, the secretary of state forthwith shall certify that fact to the attorney general for appropriate action to dissolve the corporation.

History: En. Sec. 12, Ch. 161, L. 1963.

15-2111. Transfer of shares. No shareholder of a corporation organized under this act may sell or transfer his shares in such corporation except to another individual who is eligible to be a shareholder of such corporation, and such sale or transfer may be made only after the same shall have been approved, at a stockholders' meeting, by such proportion, not less than a majority, of the outstanding stock as may be provided in the certificate of incorporation or in the by-laws. At such shareholders' meeting the shares of stock held by the shareholder proposing to sell or transfer his shares may not be voted or counted for any purpose. The articles of incorporation may provide specifically for additional restraints on the alienation of shares, and may require the redemption or purchase of such shares by the corporation at prices and in a manner specifically set forth in such articles, or the articles may specifically authorize the corporation's board of directors or its shareholders to adopt by-laws or resolutions restraining the alienation of shares and providing for the purchase or redemption by the corporation of its shares; provided, however, such provisions dealing with the purchase or redemption by the corporation of its shares may not be invoked at a time or in a manner that would impair the capital of the corporation.

History: En. Sec. 13, Ch. 161, L. 1963.

15-2112. Name. Every corporation organized under this act and transacting business in this state under a fictitious name or a designation not showing the names of all the shareholders in such corporation, shall file and publish, or cause to be filed and published, the certificates described in sections 63-601, 63-602 and 63-603, R.C.M., 1947. Any such corporation doing business contrary to the provisions of this section shall be subject to the disabilities and provisions of section 63-602, R.C.M., 1947. Every corporation organized under this act is prohibited from advertising the professional services rendered by the members of said corporation.

History: En. Sec. 14, Ch. 161, L. 1963.

15-2113. Board of directors. The number of shareholder members of the board of directors may be less than the number of shareholders, except that if a corporation has only one (1) shareholder, the board may consist of such shareholder.

History: En. Sec. 15, Ch. 161, L. 1963.

15-2114. Application of corporation law. Montana statutes shall be applicable to a corporation organized pursuant to this act, except to the extent that any of the provisions of this act are interpreted to be in conflict with the provisions of such statutes, and in such event the provisions and sections of this act shall take precedence with respect to a corporation organized pursuant to the provisions of this act. A professional corporation organized under this act shall consolidate or merge only with another

domestic professional corporation organized under this act to render the same specific professional service, and a merger or consolidation with any foreign corporation is prohibited.

History: En. Sec. 16, Ch. 161, L. 1963.

15-2115. Annual report. The annual report of a professional corporation shall list the names and post office addresses of all shareholders, and shall certify that all shareholders are duly licensed or otherwise legally authorized in this state to render the same professional service as the corporation.

History: En. Sec. 17, Ch. 161, L. 1963.

15-2116. Savings clause. The provision^s of this act shall not be construed as repealing, modifying or restricting the applicable provisions of law relating to incorporations, sales of securities or regulating the several professions enumerated in this act, except insofar as such laws conflict with the provisions of this act.

History: En. Sec. 19, Ch. 161, L. 1963.

Separability Clause

Section 18 of Ch. 161, Laws 1963 read "Severability. If any provision of this act or the application thereof to any person

or circumstances is invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

TITLE 16—COUNTIES

- Chapter 9. County commissioners—organization—meetings—compensation, 16-910, 16-912.
10. General powers and duties of county commissioners, 16-1004.1, 16-1008A, 16-1008B, 16-1009, 16-1015, 16-1030, 16-1031, 16-1036 to 16-1038.
 11. Special powers and duties of county commissioners, 16-1131, 16-1180, 16-1181.
 12. County printing—commissioners to contract for, 16-1203 to 16-1205, 16-1208, 16-1210, 16-1212 to 16-1214, 16-1217, 16-1219.
 13. County farm bureaus, 16-1303.
 15. County land advisory board, 16-1510.
 16. Rural improvement districts, 16-1601(1), 16-1601(2), 16-1602, 16-1605.1 to 16-1605.4, 16-1607, 16-1620, 16-1626, 16-1629, 16-1633 to 16-1638.
 17. Weed control, 16-1706, 16-1713.
 18. Claims against counties, county warrants, 16-1802, 16-1803.
 19. County budget system, 16-1904, 16-1907.
 20. County finance—bonds and warrants, 16-2001, 16-2008, 16-2012, 16-2026, 16-2028, 16-2033, 16-2044, 16-2050.
 24. County officers—qualifications—general provisions, 16-2414, 16-2428 to 16-2431.
 26. County treasurer—duties as to warrants and other county finances, 16-2618.
 27. Sheriff, 16-2723.
 29. County clerk, 16-2903, 16-2905, 16-2922, 16-2923, 16-2926.
 32. County auditor, 16-3201.
 36. Constable and justices of the peace, 16-3605.
 44. Metropolitan sanitary and/or storm sewer systems, 16-4401 to 16-4413.
 45. County water districts, 16-4501 to 16-4534.
 46. Dog licensing, 16-4601 to 16-4615.
 47. Zoning districts, 16-4701 to 16-4710.

CHAPTER 8—GENERAL POWERS AND LIMITATIONS UPON COUNTIES

16-804. (4444) Enumeration of powers.

Tax Sales

Board of county commissioners has the power and the authority to dispose of and convey real estate acquired through tax deeds. *Flom v. Unknown Heirs of Conrad*, 132 M 574, 319 P 2d 499, 502.

CHAPTER 9—COUNTY COMMISSIONERS—ORGANIZATION—MEETINGS—COMPENSATION

- Section 16-910. Regular meetings—extra sessions.
16-912. Compensation of members of board.

16-910. (4462) Regular meetings—extra sessions. The board of county commissioners, except as may be otherwise required of them, may meet at the county seat of their respective counties on the first and third Mondays of each and every month of the year, except when meeting as the county board of equalization as provided by law, for the purpose of allowing bills and attending to any other business that may regularly come before them, and may sit not exceeding three days at each session, except the December session, at which time they may sit not exceeding eight days. But the board may at any time, by giving at least two days' posted public notice,

hold an extra session of not over two days' duration; provided, that the limitations as to the time of sessions of the board of county commissioners contained in this section shall not apply to counties of the first, second, third or fourth classes.

History: Ap. p. Sec. 380, 5th Div. Rev. Stat. 1879; amd. Sec. 785, 5th Div. Comp. Stat. 1887; amd. Sec. 4220, Pol. C. 1895; re-en. Sec. 2891, Rev. C. 1907; amd. Sec. 1, Ch. 148, L. 1915; re-en. Sec. 4462, R. C. M. 1921; amd. Sec. 1, Ch. 35, L. 1929; amd. Sec. 1, Ch. 132, L. 1959. Cal. Pol. C. Sec. 4032.

Amendment

The 1959 amendment added the provision for meeting on the third Monday in each month and added the words "except when meeting as the county board of equalization as provided by law."

Repealing Clause

Section 2 of Ch. 132, Laws 1959 repealed all acts and parts of acts in conflict therewith.

16-912. (4464) Compensation of members of board. Each member of the board of county commissioners in counties of the first, second, third, and fourth class, shall receive an annual salary as hereinafter set forth:

First class	\$5,000.00
Second class	\$4,900.00
Third class	\$4,800.00
Fourth class	\$4,700.00

Each member of the board of county commissioners in all other counties is entitled to fifteen dollars (\$15.00) per day for each day's attendance on the sessions of the board, and eight cents (8¢) per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made, and while engaged in the performance of his official duties, and no other compensation must be allowed.

Salaries of the members of the board of county commissioners of a county shall not be changed during the entire term for which such members are elected, regardless of any change in the classification of the county during such term. If a vacancy occurs on the board of county commissioners, the person who is appointed and/or elected to fill the unexpired term shall receive the same salary as the person vacating the office.

History: En. Sec. 347, 5th Div. Rev. Stat. 1879; amd. Sec. 755, 5th Div. Comp. Stat. 1887; amd. Sec. 4222, Pol. C. 1895; re-en. Sec. 2893, Rev. C. 1907; re-en. Sec. 4464, R. C. M. 1921; amd. Sec. 1, Ch. 176, L. 1939; amd. Sec. 1, Ch. 4, L. 1949; amd. Sec. 1, Ch. 100, L. 1951; amd. Sec. 1, Ch. 82, L. 1955; amd. Sec. 1, Ch. 238, L. 1957; amd. Sec. 1, Ch. 113, L. 1963.

The 1963 amendment increased the commissioners' mileage allowance specified in the second paragraph from 7¢ to 8¢ per mile; and added the third paragraph.

Repealing Clauses

Section 2 of Ch. 238, Laws 1957 and Sec. 2 of Ch. 113, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Amendments

The 1957 amendment added the first paragraph with classifications first through fourth, in the second paragraph inserted the words "in all other counties" and substituted "fifteen dollars (\$15.00)" for "twelve dollars (\$12.00)."

Effective Date

Section 3 of Ch. 113, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

CHAPTER 10—GENERAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

Section 16-1004.1. Reseeding of right of way areas.

16-1008A. Erection and management of county buildings and other improvements.

16-1008B. Establishment of joint county youth guidance centers.

16-1009. Sale of property.

16-1015. Taxation.

16-1030. Lease of county property.

16-1031. Garbage and ash collection—tax—rates in lieu of tax.

16-1036. Lease of county property for boarding home or nursing home for aged persons.

16-1037. County construction and operation of boarding home or nursing home for aged.

16-1038. Services provided at county home.

16-1004.1. **Reseeding of right of way areas.** Whenever the natural sod cover is disturbed on right of way areas for construction of county roadways, irrigation ditches, drain ditches or other types of construction on such right of way, it shall be the duty of the county commissioners to see that such disturbed areas are seeded to an adaptable perennial grass or combination of perennial grasses and/or legumes whenever they believe it is practical to do so, using seed meeting certified standards. Time and method of seeding, fertilizing practices and grass species shall be recommended and specified by the Montana extension service. Every effort will be made to establish a sod cover on the newly cut-over area.

History: En. Sec. 2, Ch. 222, L. 1961.

Repealing Clause

Compiler's Note

Section 1 of Ch. 222, Laws 1961, is compiled as sec. 32-1606.1.

Section 3 of Ch. 222, Laws 1961 repealed all acts and parts of acts in conflict therewith.

16-1008A. (4465.8) Erection and management of county buildings and other improvements. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To cause to be erected, furnished and maintained a courthouse, jail, hospital, civic center, youth center, park buildings, museums, recreation centers, and any combination thereof, and such other public buildings as may be necessary.

The board of county commissioners shall have the power in their discretion to create a commission for the management of such civic center, youth center, park buildings, museums, county parks, recreation centers, hospitals, or any combination of two (2) or more thereof. Such commission shall be composed of the senior district court judge of the county, chairman of the board of county commissioners, the chairman of the school board for the district in which any of the above-named buildings are situated, and the mayor of the city in such district, and five (5) lay members to be appointed by the senior district court judge, the chairman of the board of county commissioners, the chairman of the school board for the district in which any of the above-named buildings are situated, and the mayor of the city in such district, and their terms of office shall be respectively one (1) for one (1), two (2) for two (2), and two (2) for three (3) years, and on the expiration of such terms of one (1), two (2) and three (3) years, their successors shall hold for three (3) years each, and all of the

above persons shall serve without compensation. In cases where a commission has been appointed, the commission together with the board of county commissioners shall have the power to employ a manager.

A county hospital so erected and furnished may be used for the hospitalization of the indigent sick of the county. Any county hospital which has heretofore been, or which may hereafter be, erected and furnished under the provisions of this act may also be used for the hospitalization of the nonindigent sick, provided said nonindigent sick pay a reasonable fee for such hospitalization, and provided further that, except in cases of emergency, there are no indigent sick needing hospitalization who would be deprived of hospitalization by reason of the use of said hospital facilities by nonindigents. The board of county commissioners of any county of this state which now has, or may hereafter acquire, title to a site and building, or buildings, suitable for county hospital purposes, shall have jurisdiction and power under such limitations and restrictions as are prescribed by law to furnish and equip such building, or buildings, for hospital purposes in accordance with and as provided by the provisions of this act.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959. See history of Sec. 16-1001.

Amendments

The 1957 amendment in the third paragraph deleted the words "and which has been, or may be, leased, as provided by section 16-1032," which appeared in the second sentence immediately following

the words "provisions of this act" and also deleted a former last paragraph which read "Nothing herein contained shall be construed as amending or repealing sections 16-1163 to 16-1165."

The 1959 amendment in the first sentence of the second paragraph, inserted the words "county parks."

Repealing Clause

Section 2 of Ch. 76, Laws 1957 repealed all acts and parts of acts in conflict therewith.

16-1008B. Establishment of joint county youth guidance centers. Two or more counties of this state, may through action of their respective boards of county commissioners, join together by contract in the establishment of a joint county youth guidance center. The cost and expenses of such joint county youth guidance center shall be apportioned between or among the contracting counties on such a basis as to be agreed upon by said contracting counties.

History: En. Sec. 1, Ch. 24, L. 1961.

Title of Act

An act to permit two or more counties, by contract, to establish joint county

youth guidance centers; to provide for apportionment of costs among the contracting counties on such a basis to be agreed upon by said contracting counties.

16-1009. (4465.9) Sale of property. (1) The board of county commissioners of the several counties in this state shall have the power to sell any property, real or personal, however acquired, belonging to the county, and which is not necessary to the conduct of the county's business or the preservation of its property. If the property, real or personal, sought to be sold, is reasonably of a value in excess of one hundred (\$100.00) dollars, the sale shall be at public auction at the courthouse door after previous notice given by publication in a newspaper published in said county, notice to be published once a week for four successive weeks

and posted in five (5) public places in the county. The sale shall be for cash, or on such terms as the board of county commissioners may approve, provided at least twenty per cent (20%) of the purchase price shall be paid in cash. In all sales of property of a value in excess of one hundred (\$100.00) dollars, there must before any sale be an appraisal thereof by the board and at a price representing a fair market value of such property, and such appraised value shall be stated in the notice of sale, provided, that whenever a county purchases equipment, as provided in section 16-1803, Revised Codes of Montana, 1947, county equipment which is not necessary to the conduct of the county business may be traded in as part of the purchase price after appraisal as herein provided, or may be sold at public auction as herein provided, in the discretion of the board of county commissioners.

(2) The board of county commissioners shall have the power to sell any property, real or personal, however acquired, belonging to the county and which is not necessary to the conduct of the county's business or the preservation of its property, to the school district directly for its appraised value which shall represent a fair market value of such property without the necessity of a public auction. If the property to be sold to the school district is reasonably of a value in excess of one hundred (\$100.00) dollars, notice of the sale shall be given by publication in a newspaper in said county, notice to be published once a week for four (4) successive weeks and posted in five (5) public places in the county.

(3) Any taxpayer who may believe that such appraised value is less than the actual value of the property, may at any time before the day fixed for the sale of such property, file with the board of county commissioners written objections to such appraised value. When any such objection is filed it vacates the sale and the board of county commissioners must at once apply to the judge of the district court to have such property re-appraised. Upon such application the district judge shall appoint for such purpose three (3) disinterested persons whose appraisal must be made and filed with the county clerk and recorder, which new appraisal or re-appraisal shall be used in the next sale of such property. Such appraisers, when appointed by the district judge, and after filing their appraisal report with the county clerk and recorder, shall be allowed five dollars (\$5.00) per day for each day necessarily employed in making such appraisal, and their necessary and actual expenses. No sale shall be made at public auction or to any school district without public auction of any property unless it has been appraised within three (3) months prior to the date of the sale, and no such sale shall be made for less than ninety per cent (90%) of the appraised value.

(4) If no bid or offer is made for any property offered for sale at public auction, after appraisal and notice given, as provided herein, the board of county commissioners may, at any time thereafter, sell such property at private sale, and may on such private sale accept as the purchase price therefor an amount not less than ninety per cent (90%) of the appraised value thereof. All deferred payments on the purchase price of any property sold, shall bear interest at the rate of six per cent (6%) per annum, payable annually and may be extended over a period of not

more than five (5) years. If the property to be sold is reasonably of a value of less than one hundred dollars (\$100.00), sale thereof may be had at either public or private sale, as in the discretion of the board of county commissioners, may appear to be to the best interests of the county. If it be at public sale, notice shall be given by posting in five (5) public places in the county at least five (5) days before the date of sale. No title to any property sold under the provisions hereof, shall pass from the county until the purchaser, or his assigns, shall have paid the full amount of the purchase price therefor, into the county treasury for the use and benefit of the county.

(5) Provided, however, if within one (1) year no immediate sale be had of real estate attempted to be sold under the provisions of this section, the board of county commissioners may make trades or exchanges of such real estate owned by the county for any other lands or real estate of equal value located within the same county.

(6) The funds derived from the sale in the discretion of the board of county commissioners may be credited to a construction reserve account and thereafter used for capital outlay for present or future construction of or an addition to a courthouse, or county jail or county hospital.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957. See history of Sec. 16-1001.

Amendment

The 1957 amendment inserted new subds. (2) and (6) and renumbered former subds. (2) to (4) as (3) to (5) and in the last sentence of subd. (3) inserted the words "or to any school district without public auction."

Repealing Clause

Section 2 of Ch. 110, Laws 1957 re-

pealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 110, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 5, 1957.

Tax Sales

Board of county commissioners has the power and the authority to dispose of and convey real estate acquired through tax deeds. *Flom v. Unknown Heirs of Conrad*, 132 M 574, 319 P 2d 499, 502.

16-1015. (4465.12) Taxation. The board of county commissioners has jurisdiction and power under such limitations and reservations as are prescribed by law: To levy such tax annually on the taxable property of the county, for county purposes as may be necessary to defray the current expenses thereof, including the salaries otherwise unprovided for, not exceeding sixteen (16) mills, except as hereinafter provided, on each dollar of the taxable valuation for any one (1) year to levy such taxes as are required to be levied by special or local statutes. Provided, however, that on and after July 1, 1963, and extending to June 30th, 1965, the board of county commissioners is authorized in its discretion to levy an additional four (4) mills on each dollar of the taxable valuation for any one (1) year, provided, however, after that period of time the levy of sixteen (16) mills shall still be in effect.

History: En. Subd. 13, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 114, L. 1949; amd. Sec. 1, Ch. 169, L. 1951; amd. Sec. 1, Ch. 185, L. 1953; amd. Sec. 1, Ch. 69, L. 1955; amd. Sec. 1, Ch. 48, L. 1957; amd. Sec. 1, Ch. 212, L. 1959; amd. Sec.

1, Ch. 205, L. 1961; amd. Sec. 1, Ch. 33, L. 1963. See history of Sec. 16-1001.

Amendments

The 1957 amendment substituted "July 1, 1957" for "July 1, 1955" and "June 30th, 1959" for "June 30th, 1957."

The 1959 amendment inserted the words "except as hereinafter provided"; substituted "July 1, 1959" and "June 30th, 1961" for "July 1, 1957" and "June 30th, 1959" respectively; substituted "an additional four (4) mills" for "not to exceed twenty (20) mills" and added the last proviso in this section.

The 1961 amendment substituted "July 1, 1961" for "July 1, 1959" and "June 30th, 1963" for "June 30th, 1961" in the last sentence.

The 1963 amendment substituted "July 1, 1963" for "July 1, 1961" and "June 30th, 1965" for "June 30th, 1963" in the last sentence.

Repealing Clauses

Section 2 of Ch. 48, Laws 1957, Sec. 2 of Ch. 212, Laws 1959 and Sec. 2 of Ch. 205, Laws 1961 repealed all acts and parts of acts in conflict therewith.

16-1030. (4465.27) Lease of county property. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To lease and demise county property, however acquired, which is not necessary to the conduct of the county's business or the preservation of county property and for which immediate sale cannot be had. Such leases shall be in such manner and for such purposes as, in the judgment of the board, shall seem best suited to advance the public benefit and welfare, and all revenue derived therefrom, except as otherwise provided, shall be paid into the county treasury. On the tenth day of January and the tenth day of July in each year the county treasurers shall distribute such revenues to the several county and trust and agency funds on the basis of the tax levy for the preceding calendar year. All such property must be leased subject to sale by the board, and no lease shall be for a period to exceed ten (10) years, save and except as to deposits of coal only or coal and the surface above the same, owned by any county or to which any county has heretofore or may hereafter acquire title by tax title, tax deed or otherwise, which lease or leases may be for a period of ten years and to run and continue as long thereafter as coal is being mined and extracted from the leased property in commercial quantities and that as to all such deposits of coal only or coal and surface the provisions of section 2208.1 and 2235 of the Revised Codes of the state of Montana, A. D. 1935 and all other provisions of the laws of Montana relating to the sale by the county commissioners of a county of property owned by the county or acquired by tax title or otherwise shall be suspended during the time any such lease or leases of coal only or coal and surface made hereunder shall be in force and effect.

History: En. Subd. 28, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 152, L. 1937; amd. Sec. 1, Ch. 11, L. 1959. See history of Sec. 16-1001.

Compiler's Note

Sections 2208.1 and 2235, referred to in this section, were repealed by Sec. 10, Ch. 171, Laws 1941.

Amendment

The 1959 amendment increased the maximum period of leases, other than coal leases, from 3 years to 10 years.

Repealing Clause

Section 2 of Ch. 11, Laws 1959 repealed all acts or parts of acts in conflict therewith.

16-1031. (4465.28) Garbage and ash collection—tax—rates in lieu of tax. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To create, abolish and change garbage and ash collection districts in thickly settled

areas outside of the limits of incorporated cities and towns. Such districts shall be created under rules to be promulgated by said board, which rules shall provide for petition on the part of a majority of taxpayers residing within such areas, for the survey of proposed districts by the county health officer as to boundaries and methods for disposal of garbage and ashes within such districts. When such a district has been created under the authority of this section the county commissioners shall be authorized and empowered to levy not to exceed two (2) mills on the taxable property within such district for the maintenance and support thereof and for the purchase or leasing of land necessary for said purpose. In lieu of such levy, the county commissioners may provide for the collection and disposal of garbage and ashes for such districts by authorizing individual contractors or firms to perform such services under a system of rates approved by the commissioners. Such rates shall be applied on a fair and equal basis to all persons utilizing such garbage collection service within a district and all rates so established shall be in relation to the amount and manner of collection and disposal service provided to the various types of customers within a district; provided, however, that in no event shall any fee exceed the amount of two dollars and fifty cents (\$2.50) per month for a family residential unit. Collection under such fees shall be an alternative to the tax levy authorized by this section, and no such levy shall be made upon taxable property within any district in which garbage collection service is provided by contractors or firms under rates established by the commissioners.

History: En. Subd. 29, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 108, L. 1947; amd. Sec. 1, Ch. 202, L. 1961. See history of Sec. 16-1001.

Amendment

The 1961 amendment substituted "two (2) mills" for "five (5) mills" in the third sentence and added the fourth, fifth, and sixth sentences.

Repealing Clause

Section 2 of Ch. 202, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 202, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 7, 1961.

16-1036. Lease of county property for boarding home or nursing home for aged persons. The board of county commissioners may lease and demise county buildings, equipment, furniture and fixtures for purpose of operation of a boarding home or nursing home for aged persons with full power of lessor, except as hereinafter limited, upon such terms and conditions as the board shall decide upon. The rentals received under such lease or leases shall be paid into the poor fund of the county. No such lease and demise shall be made for a longer period than five years, nor shall such board enter into a contract of lease without and until having advertised in a newspaper published in the county at least once a week for five weeks that the said buildings and equipment are for lease for the purpose of a boarding home or nursing home for aged persons.

History: En. Sec. 1, Ch. 87, L. 1963.

for the purpose of operating a boarding home or nursing home for the aged.

Title of Act

An act to authorize boards of county commissioners to lease county facilities

16-1037. County construction and operation of boarding home or nursing home for aged. The board of county commissioners may erect, equip, maintain, and operate a boarding home or nursing home for the aged subject to standards established by the state board of health.

History: En. Sec. 1, Ch. 88, L. 1963.

Title of Act

An act to authorize boards of county commissioners to establish a county board-

ing home or nursing home for the indigent or non-indigent aged; providing this act shall be in full force and effect upon passage and approval.

16-1038. Services provided at county home. The county boarding home or nursing home shall provide care, nursing care, maintenance, board and room for the indigent aged. If facilities permit, the county boarding home or nursing home may provide similar services to non-indigent aged and shall charge and accept such reasonable payment for such care as is determined by the board of county commissioners.

History: En. Sec. 2, Ch. 88, L. 1963.

its passage and approval. Approved February 27, 1963.

Effective Date

Section 3 of Ch. 88, Laws 1963 provided the act should be in effect from and after

CHAPTER 11—SPECIAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

Section 16-1131. Counties authorized to deed land for park to state, city, town, or United States—reversion of title.

16-1180. Minimum standards for electrical equipment installation—permits.

16-1181. When act not applicable—specific exclusions.

16-1126. (4486) Special counsel—acting county attorney.

Presumption of Regular Appointment

On appeal from a conviction for assault which was prosecuted by a special prosecutor where the record does not show whether any appointment was made un-

der this section, the court will indulge the presumption that the appointment was regularly made in the absence of a showing to the contrary. *State v. Cockrell*, 131 M 254, 309 P 2d 316, 319.

16-1131. (4487.1) Counties authorized to deed land for park to state, city, town, or United States—reversion of title. The county commissioners of any county in the state of Montana are hereby authorized to convey to the state of Montana or to any city or town in Montana or to the United States of America any tract of county owned land not exceeding one thousand two hundred eighty acres (1,280), to be used for the establishment and maintenance of a park and to be maintained by the state, city, town or federal government as a public park or recreational grounds. Said land shall be deeded to the state, city, town or federal government without charge, but upon the condition that the same shall be devoted and maintained by the state, city, town or federal government for the purpose specified in this act, and in the event that said land shall cease to be used for such purposes for a period of five (5) years in succession, the title thereto shall revert to the county making such grant.

History: En. Sec. 1, Ch. 139, L. 1935; amd. Sec. 1, Ch. 48, L. 1961.

Amendment

The 1961 amendment inserted the words

"or to any city or town in Montana" near the beginning of the first sentence and inserted "city, town" in the three other places where those words appear.

Repealing Clause

Section 2 of Ch. 48, Laws 1961 repealed all acts and parts of acts in conflict therewith.

16-1161. (4520) Liability on official bond of commissioner.

Management of County Property

Owners of land adjacent to county farm could not recover damages from the county commissioners for flooding such

land by waters from county farm caused by tenant's handling of waste irrigation water improperly. *Goetschius v. Lasich*, 137 M 465, 353 P 2d 87, 94.

16-1180. Minimum standards for electrical equipment installation—permits. The board of county commissioners of counties are hereby authorized, in their discretion:

(a) To establish by resolution suitable minimum standards for the installation of all electrical equipment, which standards, so far as practicable, shall conform to the National Board of Fire Underwriters Electrical Code, or the Rural Electrical Association wiring standards.

(b) To provide for the issuance of permits as a prerequisite to the erection, construction, reconstruction, alteration, or enlargement of any new or existing installation and for the inspection of such installation, and to establish and collect reasonable fees therefore, which fees shall be in such amount as to cover the costs of such permit and inspection. The fees so collected are to go to the general fund of the county.

History: En. Sec. 1, Ch. 49, L. 1957.

Title of Act

An act authorizing counties to establish minimum standards for the installation of

electrical equipment; providing for issuance of permits for such installation; providing for the inspection of same; and providing for exclusions herefrom; and providing for a repealing clause.

16-1181. When act not applicable—specific exclusions. This act shall not apply when there is in effect supervised inspection according to the Electrical Code of the National Board of Fire Underwriters or the Rural Electrical Association wiring standards and there is hereby specifically excluded herefrom, the following installations or use of any electrical equipment:

(a) Installations or use in mines, mills or smelters, oil refineries, ships and railway cars, or to automotive equipment.

(b) Installations or use by electricity supply companies or communication agencies in the generation, transmission or distribution of electricity or for the operation of signals or the transmission of intelligence, or to television or radio installations; and

(c) Installations or use by a railway utility in the exercise of its functions as a utility.

(d) Any farm or ranch structure or building situated on a tract of land in excess of five (5) acres.

This act shall not be construed to prohibit the installation of the electrical equipment by the owner of the property.

History: En. Sec. 2, Ch. 49, L. 1957.

Repealing Clause

Section 3 of Ch. 49, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 12—COUNTY PRINTING—COMMISSIONERS TO CONTRACT FOR

Section 16-1203.	Envelopes.
16-1204.	Letterheads.
16-1205.	Legal blanks.
16-1208.	Tax receipts in quintuple and more or less copies.
16-1210.	Imprinting corner cards on government stamped envelopes and printing post cards, stock furnished.
16-1212.	Special ruled and printed forms.
16-1213.	Bound books.
16-1214.	Size 18 x 11½ record books only.
16-1217.	Stock forms without county name.
16-1219.	Bids, how made—other prices.

16-1203. Envelopes.

	500	1000	Add'l. 1000
White Wove 6¾-24 Grade 400	\$ 9.45	\$13.50	\$ 7.75
6¾-28 Grade 450	9.75	14.10	8.40
10-24 Grade 600	10.70	16.05	10.35
10-28 Grade 700	11.35	17.35	11.60
White Bond 6¾-20 Grade 400	9.45	13.50	7.75
10-20 Grade 600	10.70	16.05	10.35
Manila or Kraft			
6¾-20 Grade 400	8.80	12.20	6.80
10-28 Grade 700	10.10	14.75	9.40
12-28 Grade 1000	11.35	17.35	11.95

History: En. Sec. 3, Ch. 118, L. 1937, amd. Sec. 1, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951; amd. Sec. 1, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised all grades and price listings. For section prior to amendment see parent volume.

16-1204. Letterheads.

	250	500	1000	Add'l. 1000
8½ x 7-16 or 20, Grade 35	\$10.25	\$12.05	\$15.10	\$ 6.25
8½ x 7-16 or 20, Grade 60	10.75	13.10	17.15	8.15
8½ x 11-16 or 20, Grade 35	11.25	13.15	16.95	7.40
8½ x 11-16 or 20, Grade 60	12.50	14.75	20.20	10.00

History: En. Sec. 4, Ch. 118, L. 1937; amd. Sec. 2, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951; amd. Sec. 2, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised all grades and price listings. For section prior to amendment see parent volume.

16-1205. Legal blanks.

	250	500	1000	Add'l. 1000
7 x 8½, printed one side	\$11.00	\$12.95	\$16.20	\$ 8.55
7 x 8½, printed two sides	17.00	19.30	23.10	9.10
8½ x 14, printed one side	16.40	19.15	24.10	10.00
8½ x 14, printed two sides	22.90	26.05	31.60	11.10
8½ x 28, printed one side	33.30	38.20	47.60	18.75
8½ x 28, printed two sides	44.40	49.60	59.20	22.20

History: En. Sec. 5, Ch. 118, L. 1937; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951; amd. Sec. 3, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised the price listings. For section prior to amendment see parent volume.

16-1208. Tax receipts in quintuple and more or less copies. Perforated, gathered, numbered, different color paper for each sheet, bound in books of 50 sets each complete.

	500 or Less	1000	2000	3000	Add'l. 1000
Size 8½ x 11 -----	\$57.65	\$85.20	\$141.75	\$194.25	\$55.10
If additional sheet, add -----	4.15	7.55	13.05	18.55	5.50
Add for extra color---	3.40	7.65	10.00	13.40	3.40
If statement printed on other side add---	5.05	9.65	13.05	16.50	3.40
Size 9¼ x 11⅞ or 8½ x 14 -----	67.20	98.00	160.10	221.60	61.60
If additional sheet add	5.50	8.90	14.40	20.60	6.55
Add for extra color---	4.15	7.20	10.65	14.05	3.40
If statement printed on other side add---	6.90	10.35	13.75	17.15	3.40
Size 10¾ x 16¾ or 11 x 17 -----	87.90	125.45	202.60	277.90	75.30
If additional sheet add	7.20	11.60	18.15	27.25	8.15
Add for extra color---	4.85	7.90	11.35	14.20	4.15
If statement printed on back add -----	7.60	11.00	13.85	17.85	4.15

To ascertain price on more than five (5) copies (quintuple) add for each additional sheet: for less than five (5) copies, deduct for each sheet at rate set forth above for sizes specified.

History: En. Sec. 8, Ch. 118, L. 1937; amd. Sec. 5, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951; amd. Sec. 4, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised all price listings. For section prior to amendment see parent volume.

16-1210. Imprinting corner cards on government stamped envelopes and printing post cards, stock furnished.

	500	1000	2000	3000	Add'l. 1000
Envelopes -----	\$ 6.85	\$ 8.35	\$11.25	\$14.10	\$ 3.85
Post Cards, 1 side printed -----	7.65	9.55	13.45	17.35	3.75
Both sides printed---	13.25	17.30	24.70	32.10	7.25

History: En. Sec. 10, Ch. 118, L. 1937; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951; amd. Sec. 5, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised all price listings. For section prior to amendment see parent volume.

16-1212. Special ruled and printed forms. Prices apply to both sides ruled different with deductions for ruling and printing the same both sides or rule and printed one side only. Prices include punching for loose leaf

holders with rings or posts and green edging of sheets. Numbering of guide lines printed along binding edge of sheet, add one dollar and fifty cents (\$1.50) for each guide line.

8½ x 11 TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 37.35	\$ 44.05	\$ 55.75	\$ 19.40
Grade 60-32 Sub.	37.65	44.75	57.10	22.55
Grade 110-36 Sub.	40.45	50.45	68.35	33.85
Deduct if both sides alike	6.05	5.95	5.80	.30
Deduct if printed and ruled, 1 side only	9.35	10.30	12.10	3.00

8½ x 14 TOTAL OF 10 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 43.45	\$ 50.75	\$ 63.95	\$ 24.00
Grade 60-32 Sub.	43.90	51.55	65.60	25.80
Grade 110-36 Sub.	47.40	58.80	79.85	40.10
Deduct if both sides ruled and printed alike	8.80	8.70	8.50	.30
Deduct if ruled and printed, 1 side only	11.20	12.10	13.90	3.35

9¼ x 17 TOTAL OF 12 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 48.30	\$ 57.20	\$ 73.30	\$ 31.70
Grade 60-32 Sub.	48.95	58.35	75.70	31.15
Grade 110-36 Sub.	54.10	68.35	95.40	53.05
Deduct if both sides ruled and printed alike	8.80	8.70	8.50	.30
Deduct if ruled and printed, 1 side only	11.20	12.10	13.90	3.35

9½ x 12 TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 39.30	\$ 46.60	\$ 59.80	\$ 23.40
Grade 60-32 Sub.	39.65	47.45	61.50	25.00
Grade 110-36 Sub.	43.15	54.35	75.25	38.90
Deduct if both sides ruled and printed alike	6.65	6.55	6.40	.30
Deduct if ruled and printed, 1 side only	9.70	10.60	12.40	3.00

9½ x 24 TOTAL OF 16 UNIT COLUMNS, BOTH SIDES
Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 66.00	\$ 77.75	\$100.75	\$ 41.70
Grade 60-32 Sub. -----	66.85	79.50	102.70	45.05
Grade 110-36 Sub. -----	73.80	93.25	130.20	72.60
Deduct if both sides ruled and printed alike -----	13.70	13.45	13.20	.30
Deduct if ruled and printed, 1 side only -----	16.70	17.90	20.30	6.70

10½ x 16 TOTAL OF 12 UNIT COLUMNS, BOTH SIDES
Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 53.40	\$ 63.25	\$ 81.10	\$ 33.25
Grade 60-32 Sub. -----	54.15	64.40	83.60	35.75
Grade 110-36 Sub. -----	59.30	74.60	103.80	52.25
Deduct if both sides ruled and printed alike -----	10.60	10.50	10.30	.60
Deduct if ruled and printed, 1 side only -----	13.00	14.20	16.40	3.30

11 x 14 TOTAL OF 10 UNIT COLUMNS, BOTH SIDES
Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 46.40	\$ 55.35	\$ 71.40	\$ 31.60
Grade 60-32 Sub. -----	57.05	56.55	73.90	33.90
Grade 110-36 Sub. -----	52.15	66.50	93.55	53.00
Deduct if both sides ruled and printed alike -----	8.20	8.10	7.20	.30
Deduct if ruled and printed, 1 side only -----	9.70	10.60	12.40	3.35

11 x 17 TOTAL OF 12 UNIT COLUMNS, BOTH SIDES
Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 56.05	\$ 66.00	\$ 84.90	\$ 31.10
Grade 60-32 Sub. -----	56.80	67.40	87.75	38.20
Grade 110-36 Sub. -----	62.30	78.60	110.20	60.60
Deduct if both sides ruled and printed alike -----	11.30	11.15	11.00	.60
Deduct if ruled and printed, 1 side only -----	13.70	14.90	17.00	3.65

11¼ x 24½ TOTAL OF 16 UNIT COLUMNS, BOTH SIDES
Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 74.40	\$ 88.00	\$113.30	\$ 46.40
Grade 60-32 Sub. -----	75.55	90.10	117.50	50.55
Grade 110-36 Sub. -----	83.95	107.00	151.20	84.25
Deduct if both sides ruled and printed alike -----	15.20	15.00	14.75	.60
Deduct if ruled and printed, 1 side only -----	17.90	19.40	21.85	3.65

12 x 9½ TOTAL OF 8 UNIT COLUMNS, BOTH SIDES
Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 37.95	\$ 45.25	\$ 58.40	\$ 23.50
Grade 60-32 Sub. -----	38.30	46.10	60.15	25.20
Grade 110-36 Sub. -----	41.55	53.00	73.90	38.95
Deduct if both sides ruled and printed alike -----	6.40	6.30	6.20	.30
Deduct if ruled and printed, 1 side only -----	9.45	10.30	12.10	3.05

12 x 19 TOTAL OF 14 UNIT COLUMNS, BOTH SIDES
Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 62.70	\$ 74.55	\$ 96.10	\$ 39.90
Grade 60-32 Sub. -----	63.60	76.20	99.45	43.30
Grade 110-36 Sub. -----	70.50	89.95	127.00	70.80
Deduct if both sides ruled and printed alike -----	13.10	12.90	12.60	.30
Deduct if ruled and printed, 1 side only -----	16.10	17.30	19.70	3.35

12 x 23 TOTAL OF 16 UNIT COLUMNS, BOTH SIDES
Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 73.45	\$ 87.00	\$112.00	\$ 46.00
Grade 60-32 Sub. -----	74.60	89.20	116.25	50.20
Grade 110-36 Sub. -----	83.05	97.40	149.65	83.60
Deduct if both sides ruled and printed alike -----	14.95	14.75	14.50	.60
Deduct if ruled and printed, 1 side only -----	17.30	18.80	21.25	3.65

12 x 28 TOTAL OF 18 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 94.75	\$113.50	\$146.10	\$ 60.60
Grade 60-32 Sub.	96.00	116.00	151.20	65.90
Grade 110-36 Sub.	106.45	136.90	193.05	107.60
Deduct if both sides ruled and printed alike	23.10	22.90	22.70	.60
Deduct if ruled and printed, 1 side only	24.10	25.45	28.80	5.70

14 x 17 TOTAL OF 12 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 61.65	\$ 72.30	\$ 94.80	\$ 40.05
Grade 60-32 Sub.	62.40	74.90	98.30	43.65
Grade 110-36 Sub.	69.75	89.25	127.15	72.10
Deduct if both sides ruled and printed alike	12.80	12.60	12.35	.30
Deduct if ruled and printed, 1 side only	14.65	16.10	18.50	3.35

14 x 22 TOTAL OF 14 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 77.50	\$ 92.20	\$119.95	\$ 53.75
Grade 60-32 Sub.	78.85	94.60	124.90	58.65
Grade 110-36 Sub.	88.50	114.10	163.60	97.35
Deduct if both sides ruled and printed alike	18.00	17.90	17.65	.60
Deduct if ruled and printed, 1 side only	19.45	21.30	24.00	4.50

14 x 34 TOTAL OF 20 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$111.75	\$131.90	\$170.35	\$ 74.85
Grade 60-32 Sub.	113.55	135.45	177.45	81.80
Grade 110-36 Sub.	127.95	163.90	234.40	138.85
Deduct if both sides ruled and printed alike	26.70	26.50	26.30	.60
Deduct if ruled and printed, 1 side only	28.50	30.30	33.60	5.75

17 x 11 TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 51.25	\$ 60.50	\$ 79.30	\$ 34.95
Grade 60-32 Sub.	52.10	62.30	82.10	37.75
Grade 110-36 Sub.	57.60	73.45	104.55	60.20
Deduct if both sides ruled and printed alike	10.70	10.55	10.40	.30
Deduct if ruled and printed, 1 side only	12.40	13.60	15.80	3.30

17 x 14 TOTAL OF 10 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 57.90	\$ 69.40	\$ 90.50	\$ 39.70
Grade 60-32 Sub.	58.70	71.05	94.00	43.30
Grade 110-36 Sub.	65.90	84.85	122.85	71.70
Deduct if both sides ruled and printed alike	12.50	12.30	12.05	.30
Deduct if ruled and printed, 1 side only	13.70	14.90	17.30	3.35

17 x 22 TOTAL OF 14 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 81.90	\$ 97.80	\$128.25	\$ 59.00
Grade 60-32 Sub.	83.30	100.70	133.90	64.60
Grade 110-36 Sub.	94.60	123.15	178.80	119.50
Deduct if both sides ruled and printed alike	18.85	18.70	18.55	.60
Deduct if ruled and printed, 1 side only	21.25	23.05	25.80	4.50

17 x 28 TOTAL OF 18 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$102.00	\$123.85	\$162.85	\$ 74.20
Grade 60-32 Sub.	103.65	127.40	169.95	81.15
Grade 110-36 Sub.	118.05	155.85	226.90	138.20
Deduct if both sides ruled and printed alike	24.30	24.10	23.90	.60
Deduct if ruled and printed, 1 side only	26.10	27.90	31.20	5.75

17 x 46 TOTAL OF 28 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$161.90	\$202.05	\$269.40	\$119.65
Grade 60-32 Sub.	164.65	207.85	277.70	131.05
Grade 110-36 Sub.	188.80	254.25	371.40	224.05
Deduct if both sides ruled and printed alike	40.75	40.30	39.85	.90
Deduct if ruled and printed, 1 side only	40.60	42.40	47.40	9.40

18 x 11½ TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 56.50	\$ 67.70	\$ 87.90	\$ 37.45
Grade 60-32 Sub.	52.30	69.25	91.05	40.60
Grade 110-36 Sub.	68.00	81.75	115.95	65.40
Deduct if both sides ruled and printed alike	11.60	11.40	11.05	.30
Deduct if ruled and printed, 1 side only	14.00	15.50	17.30	3.35

18 x 23 TOTAL OF 16 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 94.45	\$114.85	\$150.90	\$ 67.70
Grade 60-32 Sub.	95.90	118.00	157.30	73.85
Grade 110-36 Sub.	108.45	142.90	207.10	123.85
Deduct if both sides ruled and printed alike	23.70	23.50	23.30	.60
Deduct if ruled and printed, 1 side only	24.90	26.70	30.00	5.75

18 x 46 TOTAL OF 32 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$170.30	\$209.10	\$276.60	\$127.95
Grade 60-32 Sub.	173.50	215.30	289.90	140.70
Grade 110-36 Sub.	198.00	264.70	389.25	240.55
Deduct if both sides ruled and printed alike	47.70	47.60	47.50	1.20
Deduct if ruled and printed, 1 side only	46.70	48.80	55.50	10.75

19 x 12 TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 59.00	\$ 70.70	\$ 94.60	\$ 39.90
Grade 60-32 Sub.	59.85	72.40	95.55	43.30
Grade 110-36 Sub.	66.75	86.20	123.15	70.80
Deduct if both sides ruled and printed alike	11.90	11.70	11.35	.30
Deduct if ruled and printed, 1 side only	14.60	16.10	17.90	3.35

19 x 24 TOTAL OF 16 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 99.60	\$121.10	\$159.45	\$ 72.15
Grade 60-32 Sub.	101.30	124.50	166.20	78.90
Grade 110-36 Sub.	115.10	152.00	221.20	133.65
Deduct if both sides ruled and printed alike	24.00	23.80	23.60	.60
Deduct if ruled and printed, 1 side only	25.50	27.30	30.60	5.75

20 x 14 TOTAL OF 10 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 68.85	\$ 82.40	\$108.15	\$ 48.00
Grade 60-32 Sub.	69.85	84.50	112.35	53.35
Grade 110-36 Sub.	78.10	101.50	146.05	87.10
Deduct if both sides ruled and printed alike	16.15	16.00	15.85	.30
Deduct if ruled and printed, 1 side only	16.40	17.00	19.70	4.55

20 x 28 TOTAL OF 18 COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$114.85	\$137.10	\$180.70	\$ 83.85
Grade 60-32 Sub.	116.95	141.40	189.45	92.20
Grade 110-36 Sub.	133.90	175.05	256.45	159.55
Deduct if both sides ruled and printed alike	26.10	25.90	25.70	.60
Deduct if ruled and printed, 1 side only	27.30	29.10	32.40	5.75

History: En. Sec. 12, Ch. 118, L. 1937;
amd. Sec. 8, Ch. 250, L. 1947; amd. Sec. 1,
Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L.
1951; amd. Sec. 6, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised grade and
price listings. For section prior to amend-
ment see parent volume.

16-1213. Bound books.

Bound books, ruled, printed and paged on 36 Sub. No. 1, 100% rag ledger.
Patent back, flat opening. Complete, including lettering back or side title.

The first dimension listed is the binding margin. When greater or
intermediate lengths of sheets are furnished with a binding size as listed.
the difference between two given lengths is added or subtracted in the cor-
rect proportion to either of the given lengths to cover the length of sheet
actually furnished. When an intermediate binding size is furnished, the
next larger binding size shall be used.

SIZE 10½ x 16—7 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$ 82.55	\$ 88.65	\$ 95.05	\$ 97.95	\$104.40
¾ Russia, Printed Page-----	92.15	98.15	104.15	105.05	114.00
Full Russia, Printed Head-----	95.30	101.35	107.75	111.60	117.25
Full Russia, Printed Page-----	104.95	110.90	117.45	121.30	126.80
Add for folio printed head	\$11.20				
Add for folio printed page	\$20.75				
Add for each printed guide line	\$1.95				
Add for index ruled	\$8.85				
Add for index through book	\$3.40				

SIZE 11½ x 18—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$ 89.95	\$ 96.00	\$102.65	\$106.15	\$112.20
¾ Russia, Printed Page-----	101.65	107.75	114.25	117.85	123.90
Full Russia, Printed Head-----	102.20	108.15	114.60	118.45	123.95
Full Russia, Printed Page-----	113.85	119.85	126.20	130.15	134.30
Add for folio printed head	\$11.70				
Add for folio printed page	\$23.35				
Add for each printed guide line	\$1.95				
Add for index ruled	\$8.85				
Add for index through book	\$3.55				

SIZE 12 x 19 OR 14 x 17—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$ 92.35	\$ 98.60	\$105.15	\$108.75	\$114.75
¾ Russia, Printed Page-----	105.55	111.80	118.30	121.95	128.00
Full Russia, Printed Head-----	104.75	111.10	117.65	121.60	127.25
Full Russia, Printed Page-----	117.90	124.15	130.80	134.80	140.40
Add for folio printed head	\$12.15				
Add for folio printed page	\$25.35				
Add for each printed guide line	\$1.95				
Add for index ruled	\$8.85				
Add for index through book	\$3.55				

SIZE 14 x 8½—5 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$ 75.65	\$ 81.55	\$ 88.45	\$ 91.70	\$ 97.65
¾ Russia, Printed Page-----	89.35	95.20	102.10	105.45	111.15
Full Russia, Printed Head-----	85.55	91.30	98.15	101.70	107.20
Full Russia, Printed Page-----	101.90	105.05	111.85	115.45	121.50
Add for folio printed head	\$8.60				
Add for folio printed page	\$22.75				
Add for each printed guide line	\$1.95				
Add for index ruled	\$8.85				
Add for index through book	\$3.40				

SIZE 14 x 20—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$ 96.65	\$103.10	\$110.65	\$113.90	\$120.90
¾ Russia, Printed Page-----	111.85	118.30	125.85	129.10	136.10
Full Russia, Printed Head-----	111.15	117.45	124.75	128.75	134.60
Full Russia, Printed Page-----	126.25	132.60	139.95	143.85	149.90
Add for folio printed head	\$12.60				
Add for folio printed page	\$27.95				
Add for each printed guide line	\$1.95				
Add for index ruled	\$9.35				
Add for index through book	\$3.55				

SIZE 16 x 10½—5 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$ 89.10	\$ 91.90	\$100.65	\$104.50	\$108.15
¾ Russia, Printed Page-----	99.40	107.20	115.95	119.85	127.60
Full Russia, Printed Head-----	96.70	104.45	113.15	118.45	124.75
Full Russia, Printed Page-----	111.95	119.65	128.35	133.70	139.95
Add for folio printed head	\$10.60				
Add for folio printed page	\$25.85				
Add for each printed guide line	\$1.95				
Add for index ruled	\$9.35				
Add for index through book	\$3.55				

SIZE 16 x 21—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$113.10	\$123.25	\$134.30	\$139.50	\$150.55
¾ Russia, Printed Page-----	131.35	141.50	152.55	157.70	168.80
Full Russia, Printed Head-----	130.60	140.65	151.70	159.75	167.70
Full Russia, Printed Page-----	148.85	158.85	169.90	177.95	185.95
Add for folio printed head	\$13.20				
Add for folio printed page	\$31.45				
Add for each printed guide line	\$1.95				
Add for index ruled	\$9.80				
Add for index through book	\$3.75				

SIZE 17 x 14 OR 19 x 12—6 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head-----	\$ 91.95	\$ 99.85	\$108.80	\$112.75	\$121.70
$\frac{3}{4}$ Russia, Printed Page-----	110.25	118.10	127.05	131.05	139.95
Full Russia, Printed Head----	104.20	112.10	121.00	127.60	133.90
Full Russia, Printed Page----	122.45	123.85	139.30	145.85	152.15
Add for folio printed head	\$11.70				
Add for folio printed page	\$30.10				
Add for each printed guide line	\$1.95				
Add for index ruled	\$9.35				
Add for index through book	\$3.55				

SIZE 17 x 28—10 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head ----	\$135.40	\$146.30	\$158.30	\$163.80	\$171.70
$\frac{3}{4}$ Russia, Printed Page-----	157.70	168.60	180.55	186.10	198.00
Full Russia, Printed Head----	154.50	165.25	177.45	186.15	194.95
Full Russia, Printed Page----	176.80	187.85	199.75	208.50	217.20
Add for folio printed head	\$14.15				
Add for folio printed page	\$36.55				
Add for each printed guide line	\$1.95				
Add for index ruled	\$9.80				
Add for index through book	\$4.00				

SIZE 18 x 11½—5 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head-----	\$ 90.15	\$ 98.00	\$107.00	\$110.45	\$124.95
$\frac{3}{4}$ Russia, Printed Page-----	107.90	115.85	124.40	128.20	137.55
Full Russia, Printed Head----	102.10	109.90	118.65	124.95	131.15
Full Russia, Printed Page ----	119.90	127.65	136.35	142.70	149.00
Add for folio printed head	\$11.15				
Add for folio printed page	\$28.85				
Add for each printed guide line	\$1.95				
Add for index ruled	\$9.35				
Add for index through book	\$3.35				

SIZE 18 x 23—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head-----	\$122.45	\$132.85	\$144.75	\$149.40	\$160.70
$\frac{3}{4}$ Russia, Printed Page-----	144.00	154.40	165.70	170.80	182.20
Full Russia, Printed Head----	141.85	152.10	163.50	171.65	179.80
Full Russia, Printed Page----	164.60	173.60	184.95	193.10	201.25
Add for folio printed head	\$13.70				
Add for folio printed page	\$34.95				
Add for each printed guide line	\$1.95				
Add for index ruled	\$9.80				
Add for index through book	\$3.90				

SIZE 19x24—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head.....	\$127.25	\$137.75	\$149.25	\$154.40	\$165.60
$\frac{3}{4}$ Russia, Printed Page.....	150.00	160.55	172.00	177.80	162.50
Full Russia, Printed Head.....	146.50	157.10	170.55	177.60	185.20
Full Russia, Printed Page.....	169.35	179.80	191.35	199.70	207.95
Add for folio printed head	\$14.70				
Add for folio printed page	\$37.50				
Add for each printed guide line	\$1.95				
Add for index ruled	\$9.80				
Add for index through book	\$4.00				

SIZE 21 x 16—7 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head.....	\$108.40	\$118.30	\$129.35	\$134.25	\$145.20
$\frac{3}{4}$ Russia, Printed Page.....	130.20	140.15	151.05	156.05	167.00
Full Russia, Printed Head.....	125.85	135.60	146.25	154.10	161.90
Full Russia, Printed Page.....	147.55	157.45	168.15	175.95	183.75
Add for folio printed head	\$12.60				
Add for folio printed page	\$34.45				
Add for each printed guide line	\$1.95				
Add for index ruled	\$10.40				
Add for index through book	\$4.05				

SIZE 28 x 17—7 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head.....	\$124.00	\$134.30	\$146.25	\$150.25	\$161.45
$\frac{3}{4}$ Russia, Printed Page.....	154.45	164.70	176.65	180.75	191.90
Full Russia, Printed Head.....	143.20	153.65	165.50	170.15	181.80
Full Russia, Printed Page.....	173.60	184.10	195.90	200.60	212.20
Add for folio printed head	\$13.20				
Add for folio printed page	\$43.70				
Add for each printed guide line	\$1.95				
Add for index ruled	\$10.85				
Add for index through book	\$4.00				

History: En. Sec. 13, Ch. 118, L. 1937;
amd. Sec. 9, Ch. 250, L. 1947; amd. Sec. 1,
Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L.
1951; amd. Sec. 7, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised all price
listings. For section prior to amendment
see parent volume.

16-1214. Size 18 x 11½ record books only.

Loose Leaf Style With Binder

No. Pages	560	640
Marginal record ruled stock form grade 110, 36 Sub.		
Full Russia stock ruled not printed	\$64.20	\$68.20
Full Russia, Printed Head	71.80	76.05
Full Russia, Printed Page	91.80	91.10

Add for folio printed head -----	\$ 4.50
Add for folio printed page -----	\$24.50
Add for A-Z index -----	\$ 7.55
Loose leaf record binders only, full Russia, letter with back title 7 or 8 quire capacity, each-----	\$42.50

History: En. Sec. 14, Ch. 118, L. 1937;
amd. Sec. 10, Ch. 250, L. 1947; amd. Sec.
1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138,
L. 1951; amd. Sec. 8, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised all price listings. For section prior to amendment see parent volume.

16-1217. Stock forms without county name.

Budget form CB-2—per 100-----		\$ 7.15
Budget form CB-3—per 100-----		7.15
Budget form CB-4—per 100-----		7.35
Budget form CB-5—per 100-----		8.50
Budget form CB-6—per 100-----		8.50
Budget form CB-7—per 100-----		22.00
Justice docket, size 320 pages, each-----		\$30.00
Report of justice fees received, size 14 x 17, ruled and printed one side, per 100-----		7.50
Teachers' registers, six week, each -----		\$ 1.25
District school budget applications, form 1-----	100	6.50
	Additional 100	5.50
High school budget application sheets -----	100	7.00
	Additional 100	6.00
Elementary and high school budget record sheets, ruled and printed one side, size 16¾ x 26 -----	50	8.50
	Additional 100	14.75
School census reports -----	per 250	7.00
	per 500	12.00
Teachers' contracts -----	per 50	4.00
	per 100	5.50
Trustees' annual reports -----	per 50	6.00
	per 100	10.00
Teachers' reports -----	per 250	10.50
	per 500	15.00
Superintendent's or principal's reports -----	per 100	5.00
	Additional per 100	4.50
For 1-time Carbon and N.C.R. (carbonized paper forms) see paragraph 2, section 19.		

History: En. Sec. 17, Ch. 118, L. 1937;
amd. Sec. 13, Ch. 250, L. 1947; amd. Sec.
1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138,
L. 1951; amd. Sec. 9, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised all price listings, substituted "Elementary and high

school budget record sheets, ruled and printed one side, size 16¾ x 26" for "District school budget record sheets, ruled and printed one side, size 13¾ x 21¾" and added the last classification pertaining to carbon.

16-1219. Bids, how made—other prices. Bids may be made either on the entire act, or bids may be made under each section. If each section is

bid upon separately the section must be bid upon in its entirety and not upon individual items in such section.

All other blank books, 1-time carbon, carbonized paper, and printed forms not covered herein shall be furnished at prices not in excess of the prices for such work as set forth in the current Franklin Printing Catalog list, or by authority of the board of county commissioners at the price mutually agreed upon.

History: En. Sec. 19, Ch. 118, L. 1937; amd. Sec. 1, Ch. 127, L. 1949; amd. Sec. 1, Ch. 138, L. 1951; amd. Sec. 10, Ch. 200, L. 1957.

Amendment

The 1957 amendment in the second paragraph substituted the words "1-time carbon, carbonized paper, and printed

forms" for the words "and printing" and added the words "or by authority of the board of county commissioners at the price mutually agreed upon."

Repealing Clause

Section 11 of Ch. 200, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 13—COUNTY FARM BUREAUS

Section 16-1303. Fees.

16-1303. (4544) Fees. The usual certificate fee shall be required to be paid to any county officer for filing of such articles of incorporation. For filing and recording the articles of incorporation and issuing the certificate of incorporation thereon, the secretary of state shall collect the same fee as for corporations organized under sections 15-1401 to 15-1406.

History: En. Sec. 3, Ch. 14, L. 1919; re-en. Sec. 4544, R. C. M. 1921; amd. Sec. 8, Ch. 117, L. 1961.

Amendment

The 1961 amendment completely rewrote this section. For section prior to amendment see parent volume.

CHAPTER 15—COUNTY LAND ADVISORY BOARD

Section 16-1510. Prior dispositions of property validated.

16-1510. Prior dispositions of property validated. All sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest are hereby validated and confirmed, and all instruments of transfer or conveyance heretofore made or executed by any county are hereby validated and confirmed, and all such sales, dispositions and instruments are hereby declared to have vested in the grantee or purchaser, as of the date thereof, such right, title, estate and interest as is purported to be transferred by such county in and to the property described or covered.

History: En. Sec. 1, Ch. 111, L. 1961.

Title of Act

An act to validate and confirm sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest, and all instruments of transfer or conveyance heretofore made or executed by any county, and to declare that all such sales, dispositions and instruments have vested in the grantee or purchaser, as of the date thereof, such right, title and interest as is purported to be transferred by such county in

and to the property described or covered; containing a repealing clause and providing for an effective date.

Repealing Clause

Section 2 of Ch. 111, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 111, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 2, 1961.

CHAPTER 16—RURAL IMPROVEMENT DISTRICTS

- Section 16-1601(1), 16-1601(2). Rural improvement districts—creation and objects.
 16-1602. Resolution of intention—publication, mailing and notice.
 16-1605.1. Areas includable in district.
 16-1605.2. Trustees to administer district including areas in more than one county.
 16-1605.3. Terms of office of trustees—filling vacancies.
 16-1605.4. Powers of board of trustees.
 16-1607. Notice inviting proposals—publication and posting—opening bids—re-advertisement—contract for purchase.
 16-1620. Form and terms of district warrants and bonds—payment of contracts.
 16-1626. Definition of terms.
 16-1629. Maintenance of lighting systems in rural improvement districts—contract for furnishing light—apportionment of costs—maintenance fund—lien of assessment.
 16-1633. Rural special improvement district revolving fund.
 16-1634. Moneys for fund—tax levy.
 16-1635. Use of revolving fund—loans.
 16-1636. Loan—lien—repayment.
 16-1637. Excess moneys in revolving fund—transfer to general fund.
 16-1638. Cancellation of record of extinguished liability accounts.

16-1601(1). (4574) Rural improvement districts—creation and objects.

Whenever the public interest or convenience may require, and upon the petition of sixty per centum (60%) of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create special improvement districts in thickly populated localities outside of the limits of incorporated towns and cities for the purpose of building, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water, sanitary and storm sewers, light systems, waterworks plants, water systems, sidewalks and such other special improvements as may be petitioned for.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 1, Ch. 147, L. 1921; re-en. Sec. 4574, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1929; amd. Sec. 1, Ch. 30, L. 1961.

Compiler's Note

This section was amended twice in 1961, once by Ch. 30, approved February 15, and once by Ch. 134, approved March 2. Neither chapter mentioned nor contained the changes made by the other, and neither contained an effective date clause. The amendments do not appear to conflict and, if they are not in conflict, both

would be effective, except that there may be no authority for acquisition by purchase of devices intended to protect the safety of the public from open ditches carrying irrigation or other water. The section, as amended by Ch. 30, Laws 1961, is set out above; the section, as amended by Ch. 134, Laws 1961, is set out as section 16-1601(2), below.

Amendment

The 1961 amendment after the words "constructing and maintaining" inserted the words "devices intended to protect the safety of the public from open ditches carrying irrigation or other water."

16-1601(2). (4574) Rural improvement districts—creation and objects.

Whenever the public interest or convenience may require, and upon the petition of sixty per centum (60%) of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create special improvement districts in thickly populated localities outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase, and maintaining san-

itary and storm sewers, light systems, waterworks plants, water systems, sidewalks and such other special improvements as may be petitioned for.

History: En. Sec. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 1, Ch. 147, L. 1921; re-en. Sec. 4574, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1929; amd. Sec. 1, Ch. 134, L. 1961.

Compiler's Note

This section was amended twice in 1961, once by Ch. 30, approved February 15, and once by Ch. 134, approved March 2. Neither chapter mentioned nor contained the changes made by the other, and neither contained an effective date clause. The amendments do not appear to con-

flict and, if they are not in conflict, both would be effective, except that there may be no authority for acquisition by purchase of devices intended to protect the safety of the public from open ditches carrying irrigation or other water. The section, as amended by Ch. 134, Laws 1961, is set out above; the section, as amended by Ch. 30, Laws 1961, is set out as section 16-1601(1), above.

Amendment

The 1961 amendment inserted the words "or acquiring by purchase" after "constructing."

16-1602. (4575) Resolution of intention—publication, mailing and notice. Before creating any special improvement district for the purpose of making any of the improvements, acquiring any private property for any purpose authorized by this act, the board of county commissioners shall pass a resolution of intention so to do, which resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvements which are to be made, designate the name of the engineer who is to have charge of the work, and an approximate estimate of the cost thereof. Upon having passed such a resolution the board of county commissioners must give notice of the passage of such resolution of intention, which notice must be published for ten consecutive days in a daily newspaper or in two issues of a weekly newspaper published nearest to the place where such improvement district is to be created, and shall also cause to be posted within the boundaries of such special improvement district, a copy of such notice in three public places, and a copy of such notice shall be mailed to every person, firm or corporation, or the agent of such person, firm or corporation owning property within the proposed district, at his last known place of residence upon the same day such notice is first published or posted.

Such notice must describe the general character of the improvement, or improvements, so proposed to be made, or acquired by purchase, state the estimated cost thereof, and designate the time when, and the place where, the board of county commissioners will hear and pass upon all protests that may be made against the making or maintenance of such improvements, or the creation of such district, and the said notice shall refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice shall state the exact purchase price of such existing improvement.

History: En. Sec. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 2, Ch. 147, L. 1921; re-en. Sec. 4575, R. C. M. 1921; amd. Sec. 2, Ch. 134, L. 1961.

Amendment

The 1961 amendment in the second paragraph after the words "proposed to be made," inserted the words "or acquired by purchase," and added the last sentence to the last paragraph.

16-1604. (4577) Protests against creation or extension of district, etc.**Operation and Effect**

Where city agrees to provide water for a special improvement district the city does not have the duty or the obligation

to install at its own expense the water mains necessary. *Crawford v. City of Billings*, 130 M 158, 297 P 2d 292, 295.

16-1605.1. Areas includable in district. A rural improvement district, as authorized by sections 16-1601(1) and 16-1601(2), may include a part or all of any county or may include areas in more than one (1) county.

History: En. Sec. 1, Ch. 62, L. 1963.

in more than one (1) county; providing the procedure of administration therefor; providing an effective date.

Title of Act

An act authorizing the creation of a rural improvement district including areas

16-1605.2. Trustees to administer district including areas in more than one county. If a rural improvement district includes areas in more than one (1) county, the board of county commissioners of each county in which any portion of the district is situated shall, upon the creation of such district, and at a joint session, appoint a board of three (3) trustees to administer the affairs of the district.

History: En. Sec. 2, Ch. 62, L. 1963.

16-1605.3. Terms of office of trustees—filling vacancies. The trustees so appointed upon the creation of such district shall serve staggered terms of one (1), two (2), and three (3) years. At least one (1) trustee shall be appointed from each county within the district. The trustees so appointed shall hold office for the term of their respective appointment or until their successor is appointed and qualified. At the end of the respective terms of said trustees, the then board of county commissioners shall appoint a new trustee for a three (3) year term, and in case of a vacancy by death, resignation, removal from the district or otherwise a trustee shall be appointed by the board of county commissioners to fill such vacancy.

History: En. Sec. 3, Ch. 62, L. 1963.

16-1605.4. Powers of board of trustees. The board of trustees of a rural improvement district shall have all the powers and duties with respect to such district as the board of county commissioners has with respect to a district including the area of only one (1) county.

History: En. Sec. 4, Ch. 62, L. 1963.

its passage and approval. Approved February 21, 1963.

Effective Date

Section 5 of Ch. 62, Laws 1963 provided the act should be in effect from and after

16-1607. (4580) Notice inviting proposals—publication and posting—opening bids—re-advertisement—contract for purchase. (1) to (5). * * * [Same as parent volume.]

(6) If the proposed improvement consists of the purchase of an existing improvement, the board of county commissioners may, in their discretion, after the creation of the said special improvement district, and after ordering the proposed improvement, enter into a contract for the purchase of said improvement, upon such terms as they deem just,

without advertising for bids, or proposals, provided, however, that the total purchase price shall not exceed the amount set forth in the notice required by section 16-1602.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R. C. M. 1921; amd. Sec. 3, Ch. 134, L. 1961.

Amendment

The 1961 amendment added subd. (6).

16-1611. (4584) Assessment of property—apportionment of costs, etc.

References

Cited or applied in Crawford v. City of Billings, 130 M 158, 297 P 2d 292, 298.

16-1620. (4593) Form and terms of district warrants and bonds—payment of contracts. (1) All costs and expenses incurred in the construction or maintenance of any improvement specified in this act, in any improvement district shall be paid for by special improvement district bonds, or warrants. Such bonds or warrants shall be drawn in substantially the following form:

District No. _____
United States of America
State of Montana

Warrant or _____ Dollars
(Bond No. _____) \$_____

Interest at the rate of _____ per cent per annum, payable annually.

Special Improvement District Coupon Warrant or Bonds

_____, Montana.

Issued by the County of _____, Montana.

The county treasurer of _____ County, Montana, will pay to _____, or bearer, the sum of _____ dollars, as authorized by Resolution No. _____, as passed on the _____ day of _____, 19_____, creating or maintaining Special Improvement District No. _____, for the construction (or maintenance) of the improvements and work performed as authorized in said resolution to be done in said district, and all laws, resolutions and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the county treasurer of _____ County, Montana.

This warrant (or bond) bears interest at the rate of _____ per cent per annum from the date of the registration of this warrant (or bond), as expressed herein, until the date called for the redemption by the county treasurer. The interest on this warrant (or bond) is payable annually on the first day of _____ of each year, unless paid previous thereto and as expressed by the interest coupons hereto attached, which bear the signatures of the chairman of the board of county commissioners and the county clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improve-

ment districts, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the county at any time there are funds to the credit of said special improvement district fund (construction and maintenance) for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done precedent to the issuance of this warrant (or bond) have been properly done, happened and been performed in the manner prescribed by the laws of the state of Montana and the resolution and ordinances of the county of _____, Montana, relating to the issuance thereof.

Dated at _____, Montana, this _____ day of _____, 19____, County of _____, Montana.

(SEAL)

By _____, chairman of the board of county commissioners.

(SEAL)

_____ County Clerk

Registered at the office of the county treasurer of _____ County, Montana this _____ day of _____, 19_____.

County Treasurer

(2) And the same shall be drawn against the special improvement district fund created for the district, that is, either the construction or maintenance fund as the case may be, and shall bear interest not to exceed six per cent per annum from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the board of county commissioners prescribe another date. Such warrants (or bonds) shall bear the signatures of the chairman of the board of county commissioners and the county clerk, and shall bear the corporate seal of the county. They shall be registered in the office of the county clerk and the county treasurer, and, if interest coupons be attached thereto, they shall also be so registered, and shall bear the signatures of the chairman of the board of county commissioners and the county clerk. Said bonds shall be in denominations of one hundred dollars (\$100) or fractions, or multiples thereof; and may be issued in installments, and may extend over a period of not to exceed twenty (20) years.

(3) Such warrants (or bonds) shall be redeemed by the county treasurer when there are funds in the special improvement district fund against which said warrants (or bonds) are issued available therefor; provided that the county treasurer shall first pay out of the proper special improvement district fund, annually, the interest on all outstanding warrants (or bonds) on presentation of the coupons belonging thereto, and any funds remaining in the proper fund shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in order of their registration; provided, further, that whenever there are any funds in any special improvement district fund, after paying the interest on

such warrants (or bonds) drawn against said fund, the county treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the county treasurer, who shall give notice by publication once in a newspaper published in the city, or, at the option of the county treasurer, by written notice to the holder or holders of such warrants (or bonds), if their address be known, of the number of warrants (or bonds), and the date on which payment will be made, which date shall not be less than ten days after the date of publication or of service of notice, and on which date so fixed, interest shall cease.

(4) The board of county commissioners shall provide for making payments for maintenance or improvements in any rural improvement district by the following method:

The board of county commissioners shall sell bonds or warrants issued under the provisions hereof, in an amount sufficient to pay that part of the total cost and expense of making the improvement which is to be assessed against the property within the district, to the highest and best bidder therefor for cash, for not less than the face value of such bonds, or warrants, and including interest thereon, and shall use the proceeds of such sale in making payment to the contractor, or contractors, and such payment may be made either, from time to time, on estimates made by the engineer in charge of such improvements for the county, or upon the entire completion of the improvements and the acceptance thereof by the board of county commissioners. The provisions of sections 11-2313, 11-2314 and 11-2315, which relate to the notice of sale, publication of notice and manner and method of selling bonds by cities and towns, insofar as the same are applicable thereto and not in conflict with the provisions of this section, shall apply to, govern and control the form of notice of sale, publication of notice and manner and method of selling such bonds or warrants.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R. C. M. 1921; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961.

Amendments

The 1959 amendment in the second sentence of subd. (2) substituted the words "bear the signatures of" for the words "be signed by" and deleted a proviso from the end of the third sentence of that subdivision which read "provided, however, that said coupons may bear the facsimile signatures of said officers in the discretion of the board of county commissioners."

The 1961 amendment substituted "signatures" for "engraved facsimile signature" near the end of the second paragraph in the body of the form set out in subd. (1); deleted from the end of subd. (3) a sentence which read, "When

it is provided by the resolution creating or maintaining the district that the work be paid in warrants (or bonds) the board of county commissioners shall by resolution fix the denominations of such warrants (or bonds) which may be one hundred dollars (\$100.00), or fractions or multiples thereof, the rate of interest, which shall not exceed six per cent (6%) per annum, and provide for the payment or redemption of such warrants (or bonds) at a time certain, which time of payment must not exceed twenty (20) years from and after the date of issuance"; and added subd. (4).

Repealing Clauses

Section 1 of Ch. 136, Laws 1961 read "That section 16-1621, Revised Codes of Montana, 1947, be, and the same is hereby repealed."

Section 3 of Ch. 136, Laws 1961 repealed all acts and parts of acts in conflict therewith.

16-1621. (4594) Repealed.**Repeal**

This section (Sec. 21, Ch. 147, L. 1921), relating to contracts payable in warrants,

was repealed by Sec. 1, Ch. 136, Laws 1961.

16-1626. (4599) Definition of terms. 1. * * * [Same as parent volume.]

2. The words "work," "improved" and "improvements," as used in this act, shall include all work or the securing of property, by purchase or otherwise, mentioned in this act, and also the construction, reconstruction, maintenance and repairs, of all or any portion of said work.

3 to 13. * * * [Same as parent volume.]

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R. C. M. 1921; amd. Sec. 4, Ch. 134, L. 1961.

Amendment

The 1961 amendment in subd. 2 substituted "improvements," for "improvement," and after the words "securing of property" inserted the words "by purchase or otherwise."

16-1629. (4601.1) Maintenance of lighting systems in rural improvement districts—contract for furnishing light—apportionment of costs—maintenance fund—lien of assessment. (1) When there has been, or shall be, created a rural improvement district, according to the provisions of sections 16-1601 through 16-1632, for the purpose of securing a lighting system for the territory embraced in such rural improvement district, and no expense of construction is incurred by such rural improvement district in the installation of such lighting system, and it is necessary only to secure funds for the maintenance and operation of said system, and lights for said territory can best be secured by entering a contract for such lighting with some other person or corporation, the board of county commissioners of such county may enter into a contract with other persons or corporation for the purpose of furnishing light to said rural improvement district.

(2) The cost of said service to said rural improvement district may be apportioned among the various tracts of land within said improvement district in proportion to the assessed value of said lands within said improvement district as determined by the said board of county commissioners, or at the option of said board, in proportion to the lineal front footage as determined by said board of each tract, any part of which is in the district, and abuts the street or roadway along which the lighting system is to be maintained, or in proportion to the area as determined by said board of that portion of each tract included in the district; and before the first Monday of September of each year, the board of county commissioners shall pass, and finally adopt a resolution levying and assessing all the property within the district, an amount equal to the whole cost of maintaining said lighting system, and the same shall be proportioned against the several tracts of land in said district as provided herein. Said resolution levying assessments to defray the cost of maintenance shall be prepared and certified to in the manner as near as may be to a resolution levying assessments for making, constructing, and installing the improvements in said special improvement districts, and the money collected therefor, shall be paid into a fund known as Special Im-

provement District No. _____ Maintenance Fund, the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situated, and such funds shall be used to defray the expense of maintenance of said system, and for no other purpose. Any such assessment levied and made for any purpose in this section mentioned, together with all cost and penalties, shall constitute a lien upon and against the property upon which said assessments are made and levied from and after the date of the final passage and adoption of the resolution levying the same, which lien can be only extinguished by payment of such assessments, with all penalties, costs and interest.

History: En. Sec. 1, Ch. 58, L. 1933; amd. Sec. 1, Ch. 217, L. 1959.

Amendment

The 1959 amendment in subd. (2) inserted the words "within said improvement district" the second time they appear and added that portion of the subdivision beginning with the words "or at the option" down to and including the words "each tract included in the district."

Repealing Clause

Section 2 of Ch. 217, Laws 1959 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 217, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 11, 1959.

16-1633. Rural special improvement district revolving fund. The board of county commissioners of any county in the state which may hereafter create any rural special improvement district or districts for any purpose shall, in order to secure prompt payment of any special improvement district bonds or warrants issued in payment of improvements made therein, and the interest thereon as it becomes due, create, establish, and maintain by resolution a fund to be known and designated as "Rural Special Improvement District Revolving Fund."

History: En. Sec. 1, Ch. 188, L. 1957.

Title of Act

An act relating to rural special improvement districts in counties; authorizing the creation, maintenance and use of a rural special improvement district revolving fund in any county for the purpose of se-

curing prompt payment of rural special improvement district bonds and warrants and interest thereon, and requiring levy of taxes when necessary for the financial requirements of such fund; and repealing all acts and parts of acts in conflict herewith.

16-1634. Moneys for fund—tax levy. For the purpose of providing funds for such revolving fund the board of county commissioners

(1) may in its discretion, from time to time, transfer to the revolving fund from the general fund of the county such amount or amounts as may be deemed necessary, which amount or amounts so transferred shall be deemed and considered, and shall be, loans from such general fund to the revolving fund; and

(2) shall, in addition to such transfer or transfers from the general fund, or in lieu thereof, levy and collect for such revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable property in such county as shall be necessary to meet the financial requirements of such fund, such levy, together with such transfer, not to exceed in any one year five per centum (5%) of the principal amount of the then outstanding rural special improvement district bonds and warrants.

History: En. Sec. 2, Ch. 188, L. 1957.

16-1635. Use of revolving fund—loans. (1) Whenever any rural special improvement district bond or warrant, or any interest thereon, shall hereafter become due and payable, and there shall then be either no money or not sufficient money in the appropriate district fund with which to pay the same, an amount sufficient to make up the deficiency may, by order of the board of county commissioners, be loaned by the revolving fund to such district fund, and thereupon such bond or warrant or such interest thereon shall be paid from the money so loaned or from the money so loaned when added to such insufficient amount, as the case may require.

(2) In connection with the issuance of rural special improvement district bonds or warrants, the board of county commissioners may undertake and agree to issue orders annually authorizing loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts thereof to the extent that funds are available, and may further undertake and agree to provide funds for such revolving fund pursuant to the provisions of section 2 [16-1634] of this act by annually making such tax levy (or, in lieu thereof, such loan from the general fund) as the board of county commissioners may so agree to and undertake, subject to the maximum limitations imposed by said section 2 [16-1634] of this act, which said undertakings and agreements shall be binding upon said county so long as any of said special improvement district bonds or warrants so offered, or any interest thereon, remain unpaid.

History: En. Sec. 3, Ch. 188, L. 1957.

16-1636. Loan—lien—repayment. Whenever any loan is made to any rural special improvement district fund from the revolving fund, the revolving fund shall have a lien therefor on the land within the district which is delinquent in the payment of its assessments, and on all unpaid assessments and installments of assessments on such district, whether delinquent or not, and on all moneys thereafter coming into such district fund, to the amount of such loan, together with interest thereon from the time it was made at the rate, or percentage, borne by the bond or warrant for payment of which, or, of interest thereon, such loan was made; and whenever there shall be moneys in such district fund which are not required for payment of any bond or warrant of such district, or of interest thereon, so much of such moneys as may be necessary to pay such loan shall, by order of the board of county commissioners, be transferred to the revolving fund; and after all the bonds and warrants issued on any rural special improvement district have been fully paid, all moneys remaining in such district fund shall by the order of the board be transferred to and become part of the revolving fund; if after all the bonds and warrants issued on any rural special improvement district have been fully paid and all moneys remaining in such district fund have been transferred to the revolving fund there still remains a debt from the district to the revolving fund, the board of county commissioners may foreclose the lien upon property within the district owing unpaid assessments to the district for the purpose of paying off said loan to the revolving fund.

History: En. Sec. 4, Ch. 188, L. 1957.

16-1637. Excess moneys in revolving fund—transfer to general fund. Whenever there is in the revolving fund an amount in excess of the amount which the board deems necessary for payment or redemption of maturing bonds or warrants or interest thereon, the board may order such excess or any part thereof transferred to the general fund of the county.

History: En. Sec. 5, Ch. 188, L. 1957.

Separability Clause

Section 6 of Ch. 188, Laws 1957 read: "If any clause, sentence, paragraph, section, or other part whatsoever, of this act shall for any reason be held to be invalid or inoperative, the remainder of this act shall not thereby be invalidated, impaired, or in anywise affected, and such holding

shall be confined in its effect to the clause, sentence, paragraph, section, or other part of this act, directly adjudged to be invalid or inoperative."

Repealing Clause

Section 7 of Ch. 188, Laws 1957 read "All acts and parts of acts in conflict with this act are hereby repealed to the extent of such conflict."

16-1638. Cancellation of record of extinguished liability accounts. The board of county commissioners in any county in the state of Montana is hereby authorized to cancel of record all or any special rural improvement district liability accounts incurred or issued prior to February 25, 1929, the liability of which has been extinguished by reason of issuance of tax deed, or by the application of the statute of limitations or other laws of the state of Montana.

History: En. Sec. 1, Ch. 3, L. 1959.

Title of Act

An act relating to cancellation of record of special improvement district warrants and liability accounts in rural improvement districts in counties in which warrants or liability accounts were incurred or issued prior to February 25, 1929, and the liability of which has been extin-

guished by reason of issuance of tax deeds, by application of statute of limitations, or other laws of the state of Montana; and containing a repealing clause.

Repealing Clause

Section 2 of Ch. 3, Laws 1959 repealed all acts and parts of acts in conflict therewith.

CHAPTER 17—WEED CONTROL

Section 16-1706. Wilfully permitting noxious weeds to go to seed unlawful.

16-1713. Appointment of weed control and weed seed extermination supervisors—term of office—compensation.

16-1706. Wilfully permitting noxious weeds to go to seed unlawful. It shall be unlawful to wilfully permit any noxious weed, as named in this act, or designated by the board of county commissioners of the respective county, to go to seed on any lands within the areas of any district. This section shall apply to all persons, co-partnerships, corporation, or companies owning, occupying or controlling lands, easements, or right of ways, as well as all county, state and federal owned and controlled highways, state lands; also all drainage and irrigation ditches, spoil banks, borrow pits and right of ways for canals and laterals within the district.

History: En. Sec. 2, Ch. 195, L. 1939; amd. Sec. 1, Ch. 11, L. 1961.

word "also" in the final clause of the section.

Amendment

The 1961 amendment inserted the word "wilfully" in the opening clause of the section; inserted the words "state lands"; and deleted the word "and" before the

Repealing Clause

Section 2 of Ch. 11, Laws 1961 repealed all acts and parts of acts in conflict therewith.

16-1713. Appointment of weed control and weed seed extermination supervisors—term of office—compensation. The commissioners shall appoint for each county in which a city, town, or county weed control and weed seed extermination district is created, a board of weed control and weed seed extermination supervisors, upon the creation of the first district, consisting of three members, who are owners of agricultural land within a district. They shall be appointed for a period of one, two, three (1, 2, 3) years, respectively, dating from the preceding July, and thereafter an appointment or reappointment shall be made annually for a period of three (3) years, with said appointment being made at the July meeting of the board of county commissioners. Said supervisors shall be public officers, and they shall organize by choosing a chairman and a secretary. The secretary may or may not be a member of the board. All such supervisors shall be entitled to mileage and per diem at the prevailing rates for other county employees. The supervisors may employ suitable and competent persons [as] assistants and employees as may be necessary and provide for their compensation. It shall be the duties of said supervisors to supervise within their county the control program.

History: En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961.

Compiler's Note

The compiler has inserted the bracketed word "as."

Amendment

The 1961 amendment substituted the

fifth sentence, relating to mileage and per diem of supervisors, for a sentence which read "All such supervisors shall serve without pay, except expenses for mileage, at five cents (5¢) a mile and five dollars (\$5.00) per diem."

Repealing Clause

Section 2 of Ch. 51, Laws 1961 repealed all acts and parts of acts in conflict therewith.

CHAPTER 18—CLAIMS AGAINST COUNTIES, COUNTY WARRANTS

Section 16-1802. Claims to be itemized—time for presenting.

16-1803. Request for bids necessary in making contracts for purchases and for construction of buildings exceeding two thousand dollars.

16-1801. (4604) County officer not to present certain claims, etc.

References

Cited or applied in *Neil v. Lewis and Clark County*, 133 M 323, 323 P 2d 270,

272; *State ex rel. Montana Hospital Assn. v. Pitch*, — M —, 372 P 2d 90, 91.

16-1802. (4605) Claims to be itemized—time for presenting. No account must be allowed by the board unless the same is made out in separate items, the nature of each item stated; if it is for official services for which no specified fees are fixed by law, the time actually and necessarily devoted to such service must be stated. Claims against the county shall contain the following statement: "I certify that this claim is correct and just in all respects, and that payment or credit has not been received." Claims need not be verified by affidavit. Every claim against the county must be presented within a year after the last item accrued.

History: Ap. p. Sec. 23, p. 503, Ban-nack Stat.; re-en. Sec. 23, p. 437, Cod. Stat. 1871; amd. Sec. 1, p. 63, L. 1874; re-en. Sec. 357, 5th Div. Rev. Stat. 1879; re-en. Sec. 762, 5th Div. Comp. Stat. 1887;

amd. Sec. 4286, Pol. C. 1895; re-en. Sec. 2945, Rev. C. 1907; re-en. Sec. 4605, R. C. M. 1921; amd. Sec. 1, Ch. 56, L. 1957. Cal. Pol. C. Sec. 4072.

Amendment

The 1957 amendment deleted the words "and is verified by affidavit showing that the account is just and wholly unpaid; and" which appeared between the words "stated" and "if" and added the second sentence.

Operation and Effect

Where, without first ascertaining the legal ownership thereof, a county appropriated a landowner's gravel, the landowner's action was not barred by the limitation of this section. *Neil v. Lewis and Clark County*, 133 M 323, 323 P 2d 270.

16-1803. Request for bids necessary in making contracts for purchases and for construction of buildings exceeding two thousand dollars. (1) No contract shall be entered into between a board of county commissioners for the purchase of any automobile, truck, or other vehicle, or road machinery, or for any other machinery, apparatus, appliances or equipment, or for any materials or supplies of any kind, or for the construction of any building, for which must be paid a sum in excess of two thousand dollars (\$2,000.00) without first publishing a notice calling for bids for furnishing the same, which notice must be published at least once a week, for three (3) consecutive weeks before the date fixed therein for receiving bids, in the official newspaper of the county, and every such contract shall be let to the lowest and best responsible bidder; provided that the provisions of this section shall not apply to contracts for public printing entered into in accordance with the provisions of Chapter 12 of Title 16 and provided further, that the provisions of this section shall not apply to contracts for purchases, which in the opinion of the board, are made necessary by fires, flood, explosion, storm, earthquake, or other elements, epidemic, riot, insurrection, or for the immediate preservation of order, or of the public health, or for the restoration of a condition of usefulness which has been destroyed by accident, wear, tear, mischief, or for the relief of a stricken community overtaken by calamity.

(2) and (3). * * * [Same as parent volume.] ✓

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963.

Amendment

The 1963 amendment inserted "or for the construction of any building" in the first part of subd. (1).

16-1808. (4610) Appeals.**Mandate as Remedy**

District court properly quashed writ of mandate to compel county commissioners to allow claim of hospital for medical care of a floating sheepherder since there existed a plain, speedy and adequate

remedy at law by an appeal to the district court from disallowance of claim by county commissioners. *State ex rel. Montana Hospital Assn., Inc. v. Pitch*, — M —, 372 P 2d 90, 91.

CHAPTER 19—COUNTY BUDGET SYSTEM

Section 16-1904. Hearings on budget—adoption—fixing tax levies.

16-1907. Emergency expenditures—notice and hearings—objections by taxpayers—appeal—notice and hearing dispensed with in extreme cases—emergency warrants—tax levy—lapse of appropriations.

16-1904. (4613.4) Hearings on budget—adoption—fixing tax levies. (1). * * * [Same as parent volume.] ✓

(2) Upon the conclusion of such hearing the board shall first determine and fix the amount which it is estimated will accrue to each fund

during the fiscal year from all sources, except the taxation of property, but in so doing the board shall not include any amount which it is anticipated may be received during the fiscal year from the payment of taxes which became delinquent during any preceding fiscal year, or years. The board shall then determine and fix separately the amount appropriated for and authorized to be expended for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for the expenditures so authorized; provided that there shall not be added to the amount to be appropriated and authorized to be expended for any item, or to the total amount appropriated and authorized to be expended from any fund any amount or percentage whatever because of any anticipated loss of revenue by reason of the nonpayment of taxes levied for such fiscal year; and provided further that the amount appropriated and authorized to be expended for any item contained in such budget, except for capital outlay, election expenses, expenditures from county poor funds, and payment of emergency warrants and interest thereof, must not exceed by more than five per centum (5%) the amount appropriated and authorized for such item under the appropriation contained in the budget approved and adopted for the fiscal year immediately preceding, and the total amount appropriated and authorized to be expended from any fund, except for capital outlay, election expenses and payment of emergency warrants and interest thereon, shall not exceed by more than five per centum (5%) the total amount appropriated and authorized for all purposes, except for capital outlay, election expenses, expenditures from county poor funds, and payment of emergency warrants, from such fund under the appropriation made from such fund in the budget approved and adopted for the fiscal year immediately preceding; provided further that the foregoing limitations shall not apply to appropriations and expenditures authorized to be made from the county poor fund for payment of bonds and emergency warrants and interest thereon; and provided further that the total expenditures authorized to be made from any fund, including reserve added thereto as hereinafter provided, shall not, in any event, exceed the aggregate of the cash balance in such fund at the close of the fiscal year immediately preceding, the amount of estimated revenues to accrue to such fund, as determined and fixed in the manner herein provided, and the amount which may be raised for such fund by a lawful tax levy during the fiscal year.

(3) to (6). * * * [Same as parent volume.] ✓

History: En. Sec. 4, Ch. 148, L. 1929; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963.

Amendment

The 1963 amendment inserted the words "for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued" in the first part of the second sentence of subsection (2); reduced the percentage set forth in two places in the second proviso to the second sentence of subsection (2)

from 10% to 5%; and substituted "total amount appropriated and authorized" the second place that phrase appears in the second proviso to the second sentence of subsection (2) for "total amount actually expended."

Saving Clause

Section 2 of Ch. 220, Laws 1963 read "Nothing contained in this act is intended to or should be construed as changing, amending or repealing any portion of sub-

sections (1), (3), (4), (5) and (6) of section 16-1904."

Repealing Clause

Section 3 of Ch. 220, Laws 1963 repealed all acts and parts of acts in conflict therewith.

16-1907. (4613.6) Emergency expenditures—notice and hearings—objections by taxpayers—appeal—notice and hearing dispensed with in extreme cases—emergency warrants—tax levy—lapse of appropriations. (1) to (4). * * * [Same as parent volume.] ✓

(5) Upon the happening of an emergency caused by fire, flood, explosion, storm, earthquake, epidemic, riot, or insurrection, or for the immediate preservation of order or of public health, or for the restoration of a condition of usefulness of which has been destroyed by accident, or for the relief of a stricken community overtaken by calamity, or in settlement of approved claims for personal injuries or property damages, exclusive of claims arising from the operation of any public utility owned by the county, or to meet mandatory expenditures required by law, the county commissioners may, upon adoption by unanimous vote of all members present at any meeting, the time and place of which all members shall have had reasonable notice, of a resolution stating the facts constituting the emergency, and entering the same upon their minutes, make the expenditures or incur the liabilities necessary to meet such emergency without further notice or hearing; provided, that the aggregate total of all expenditures made or liabilities incurred in any fiscal year to meet emergencies other than such as are caused by fire, flood, explosion, earthquake, epidemic, riot or insurrection, shall not exceed the sum of two hundred thousand dollars (\$200,000.00) in counties of classifications 1, 2, 3 and 4, provided, however, that after July 1, 1963, such emergency expenditures shall not exceed twenty-five thousand dollars (\$25,000.00); fifteen thousand dollars (\$15,000.00) in counties of classifications 5 and 6, and seven thousand five hundred dollars (\$7,500.00) in counties of classification 7 unless the excess above said sum shall first have been authorized by a majority of the taxpaying freeholders of such county, who are registered electors therein, voting at a general or special election. The question of authorizing such excess expenditure shall be submitted in the following form, inserting in the ballot the amount of the excess proposed to be authorized and a description of the emergency to be met:

Shall the board of county commissioners of _____ County, Montana be authorized to make additional expenditures and incur additional liabilities in the amount of \$_____ over and above the sum of _____, to meet an emergency caused by _____.

☐ Yes

☐ No

Notice of such election shall be given by posting notice thereof at least fifteen (15) days before such election in three (3) public places in each voting precinct within the county and by publishing such notice for not less than ten (10) days before the date of such election.

(6) to (8). * * * [Same as parent volume.] ✓

History: En. Sec. 6, Ch. 148, L. 1929; Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, 1955; amd. Sec. 1, Ch. 194, L. 1963.

Amendment

The 1963 amendment increased the maximum annual expenditure by counties of classifications 1 to 4 as specified in subsection (5) from \$25,000 to \$200,000; and inserted the proviso for reversion to the \$25,000 maximum after July 1, 1963.

Effective Date

Section 2 of Ch. 194, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 7, 1963.

CHAPTER 20—COUNTY FINANCE—BONDS AND WARRANTS

- Section 16-2001. Investments of sinking funds of counties, cities and towns—protection and keeping of bonds, securities, and any time or savings deposits.
- 16-2008. Board of county commissioners may issue bonds for certain purposes.
- 16-2012. Form of bonds.
- 16-2026. Who are entitled to vote.
- 16-2028. Canvass of election returns—resolution for bond issue.
- 16-2033. Form and execution of bonds.
- 16-2044. Investment of sinking and interest fund.
- 16-2050. Investment of county moneys in county warrants and investment of school district or county high school moneys.

16-2001. (4622.1) Investments of sinking funds of counties, cities and towns—protection and keeping of bonds, securities, and any time or savings deposits. That the board of county commissioners of any county of the state of Montana, and the council or commission of any city or town of the state of Montana, shall have the power and authority and shall invest so much of the bond sinking funds of any such county, city or town, as is not needed for the payment of bonds or interest coupons, in United States government bonds or securities, state bonds or securities, any time or savings deposits, county, city or school district bonds or county or city warrants or other bonds or securities which are supported by general taxation, except irrigation district bonds, and special improvement district or maintenance district bonds or warrants; provided, however, that all such investments must first be approved by the state examiner, and that all such bonds, securities, or any time or savings deposits must be due and payable at least sixty (60) days before the obligations, for the payment of which the sinking fund was established, shall become due and payable; and provided further, that whenever any of the bonds, for which such sinking fund was established, are not yet due but are then redeemable under optional provisions thereof, such sinking funds shall not be subject to investment but shall be used and applied in payment and redemption of such bonds. The bonds, securities, and any time or savings deposits in which any such sinking funds are invested shall be kept in the custody of the county, city or town treasurer and held by him for the benefit of the county, city or town, as the case may be. It shall be the duty of such treasurer to properly protect such bonds, securities, and any time or savings deposits by insurance, the use of safety deposit boxes, or other means, the expense of which shall be a proper charge against the particular county, city or town. All moneys derived from interest on sinking fund investments as herein authorized, shall be credited by the treasurer of such county, city or town, to the sinking fund for which the investment was made.

History: En. Sec. 1, Ch. 86, L. 1923; amd. Sec. 1, Ch. 37, L. 1939; amd. Sec. 1, Ch. 11, L. 1963.

Amendment

The 1963 amendment inserted "any time or savings deposits" in two places in the first sentence and in one place each in the second and third sentences.

16-2003. (4626) Lost bond or warrant.

Compiler's Note

The word "bond" at the beginning of this section in the parent volume should be "board."

16-2008. (4630.1) Board of county commissioners may issue bonds for certain purposes. The board of county commissioners of every county of the state is hereby vested with the power and authority to issue, negotiate and sell coupon bonds on the credit of the county, as hereinafter in this act more specifically provided, for any of the following purposes:

(a) For the purpose of acquiring land for sites and grounds for a public building or buildings of any kind within the county and under its control, which the county has lawful authority to acquire or erect, control and maintain; for the purpose of acquiring land for any other public use or activity within the county, under its control and authorized by law.

(b) For the purpose of constructing, erecting or acquiring by purchase necessary public buildings within the county, under its control and authorized by law, making additions to and repairing buildings and for the purpose of furnishing and equipping the same, and for the purpose of building, purchasing, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water.

(c) to (i). * * * [Same as parent volume.] ✓

History: En. Sec. 1, Ch. 188, L. 1931; amd. Sec. 1, Ch. 135, L. 1937; amd. Sec. 1, Ch. 136, L. 1963.

Amendment

The 1963 amendment added the words "and for the purpose of building, purchasing, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water" at the end of subd. (b).

Effective Date

Section 2 of Ch. 136, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 2, 1963.

Temporary Authority for Funding Bonds

Chapter 210, Laws 1963, authorized county commissioners, during the period from July 1 to December 31, 1963, to issue bonds under certain conditions for the purpose of funding warrants outstanding on June 30, 1963. The act read: "An act authorizing boards of county commissioners to issue funding bonds after July 1, 1963,

to fund outstanding county warrants as of June 30, 1963; providing the term of funding bonds; providing for a public hearing; and providing an effective date.

"Section 1. The board of county commissioners of any county having, at the close of business on June 30, 1963, an indebtedness in excess of two hundred thousand dollars (\$200,000) consisting of outstanding warrants issued against any authorized county fund or funds and, being without sufficient money in any such fund or funds with which to pay the same, may, on and after July 1, 1963, issue and sell negotiable funding bonds to the extent that such outstanding warrants shall exceed the total cash on hand in such funds of the county as of the close of business on June 30, 1963, for the purpose of funding, paying, and retiring such outstanding warrants.

"Section 2. Such funding bonds may be issued and sold without the board of county commissioners being required to submit the question of issuing such bonds at an election; and provided, further, that such bonds, when issued, may with all other outstanding indebtedness of the

county exceed, in the aggregate, the limit of indebtedness fixed by section 16-2010, R. C. M. 1947, but the total of all outstanding indebtedness of the county including funding bonds shall not exceed in the aggregate the five per cent (5%) limit of indebtedness permitted such county under section 5 of article XIII of the Montana constitution.

"Section 3. Such bonds shall be issued for a term not to exceed ten (10) years and shall be sold on the basis of competitive bids in accordance with the laws of the state of Montana governing the issuance, sale and exchange of county bonds and the levying of taxes for the payment of principal and interest and the redemption thereof.

"Section 4. Before adopting a resolution providing for the issue and sale of such bonds, the board of county commissioners shall publish a proclamation declaring its intention to so adopt a resolution for the issue and sale of funding bonds. The proclamation shall set forth the total amount of county warrants and indebtedness outstanding, the total amount of such proposed bond issue, the proposed methods of payment and redemption, and such further information as the board

shall consider necessary. The proclamation shall provide for a public hearing to be conducted at least ten (10) days subsequent to the publication. Any taxpaying elector of the county may attend such hearing and present written or oral protest to the passage of the resolution and the board shall fully consider all protests so submitted. If, after considering all protests, the board determines that the best interests of the county require the issuance of such funding bonds, its decisions shall be final and it may adopt the necessary resolution for the issue and sale of such funding bonds.

"Section 5. The purpose of this act is to allow any county having an indebtedness in excess of two hundred thousand dollars (\$200,000) consisting of outstanding warrants and being without sufficient money to pay the same out of current tax receipts, to achieve a sound and current financial basis and to attain a position of compliance with county budget laws.

"Section 6. This act shall be in full force and effect from and after its passage and approval and shall be effective from the date of its approval until December 31, 1963."

16-2012. (4630.5) Form of bonds. All bonds hereafter issued by any county shall be either amortization bonds or serial bonds, and all things being equal amortization bonds shall be issued in preference to serial bonds, otherwise serial bonds may be issued.

The term "amortization bonds," as used in this act, is hereby defined as meaning that form of bond on which a part of the principal is required to be paid each time interest becomes due and payable, which part payment of principal increases with each following installment in the same amount the interest payment decreases, so that the combined amount payable on principal and interest is the same on each interest payment date; provided, however, that the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

The term "serial bonds," as used in this act, is hereby defined as being a bond issue payable in equal annual installments, one (1) installment consisting of one (1) or more bonds, becoming due and payable each year, the amount to be paid and redeemed each year being determined by dividing the total amount of the bonds to be issued by the total number of years the issue is to run, so that the total amount of principal to be paid each year the bonds are to run will be the same; provided, however, that the installments becoming due and payable the first year, or the first and second years, may vary in amount from the others to the extent resulting from fixing the amounts of each bond of the other installments at one hundred dollars (\$100.00), five hundred dollars (\$500.00) or one thousand dollars (\$1,000.00) as may be determined by the board of county commissioners.

History: En. Sec. 5, Ch. 188, L. 1931; amd. Sec. 1, Ch. 112, L. 1961.

Amendment

The 1961 amendment substituted a new proviso at the end of the section for one which read "provided, however, that the final payment may vary in amount from the other payments to the extent resulting from fixing the amount of each bond

of the other payments at one hundred dollars (\$100.00) or some multiple thereof."

Effective Date

Section 2 of Ch. 112, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 2, 1961.

16-2026. (4630.12) Who are entitled to vote. In all county bond elections hereafter held only qualified registered electors residing within the county, who are taxpayers upon property therein and whose names appear upon the last completed assessment role for state, county and school district taxes, shall have the right to vote. Upon the adoption of the resolution calling for the election, the county clerk must cause to be published in the official newspaper of the county a notice, signed by him, stating that registration for such bond election will close at noon on the fifteenth day prior to the date for holding such election and at that time the registration books shall be closed for such election. Such notice must be published at least ten (10) days prior to the day when such registration books will be closed.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the registered electors of such voting precinct, who are taxpayers upon property within the county and whose names appear on the last completed assessment roll for state, county and school district taxes, and who are entitled to vote at such election, and shall prepare precinct registers for such election, as provided in section 23-515, and deliver the same to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post such list of qualified electors.

History: En. Sec. 12, Ch. 188, L. 1931; amd. Sec. 1, Ch. 138, L. 1939; amd. Sec. 18, Ch. 64, L. 1959.

Amendment

The 1959 amendment, in the second paragraph, substituted the words "precinct registers" for the words "poll books."

16-2028. (4630.14) Canvass of election returns—resolution for bond issue. If the bonding election be held at the same time as a general election, then the returns shall be canvassed at the same time as the returns from such general election; but if the bonding election is a special election, then the board of county commissioners shall meet within ten (10) days after the date of holding such special election and canvass the returns. If it is found that at such election forty per centum (40%) or more, of the qualified electors entitled to vote at such election voted on such question, and that a majority of such votes were cast in favor of the issuing of such bonds, the board of county commissioners shall, at a regular or special meeting held within thirty (30) days thereafter, pass and adopt a resolution providing for the issuance of such bonds. Such resolution shall recite the purpose for which such bonds are to be issued, the amount thereof, the maximum rate of interest the bonds may bear, the date they shall bear, the period of time through which they shall be payable, the optional provisions, if any; and provide for the manner of the execution

of the same. It shall provide that preference shall be given amortization bonds but shall fix the denomination of serial bonds in case it shall be found advantageous to issue bonds in that form, and shall adopt a form of notice of the sale of the bonds.

The board may, in its discretion, provide that such bonds may be issued and sold in two or more series or installments.

Provided, however, that if none of said bonds have been sold and issued within three years from the date of the bonding election, and no vested rights have accrued thereunder, the board of county commissioners may rescind the authority to sell and issue such bonds by the passage and adoption of a resolution wherein is recited the reason for such rescission of authority.

History: En. Sec. 14, Ch. 188, L. 1931; **Amendment**
amd. Sec. 1, Ch. 210, L. 1961.

The 1961 amendment added the proviso at the end of the section.

16-2033. (4630.19) Form and execution of bonds. At the time of the sale of the bonds or at a meeting held thereafter the board of county commissioners shall prescribe the form of the bonds, whether amortization bonds or serial bonds, and of the coupons to be attached thereto. Each and every county bond and every coupon attached thereto must be signed by the chairman of the board of county commissioners and the county treasurer and attested by the county clerk, and each bond shall have the county seal affixed thereto.

History: En. Sec. 19, Ch. 188, L. 1931; **Amendment**
amd. Sec. 8, Ch. 260, L. 1959.

The 1959 amendment deleted a proviso from the end of this section which authorized facsimile signatures on coupons.

16-2044. (4630.30) Investment of sinking and interest fund. Whenever there is available money in any sinking and interest fund, over and above the amount required for payment of principal and interest becoming due on the next interest payment date, sufficient to pay and redeem one or more outstanding bonds of the issue or series to which such sinking and interest fund belongs, and such bonds are not held by the state of Montana and are not yet redeemable or due, the county treasurer, at the direction of the board of county commissioners, shall purchase such bond or bonds of such issue or series, if this can be done at not more than par and accrued interest, or at such reasonable premium as the board may feel justified in paying, not in any case exceeding five per centum (5%).

When any bonds have been heretofore or are hereafter purchased with any sinking and interest fund moneys under the provisions of this section such bonds, with attached interest coupons, if not then in the possession of the county treasurer, shall be immediately delivered to him, and such county treasurer shall at once endorse across the face of each such bond the word "Paid" and the date thereof and shall sign such endorsement, and such treasurer shall, without detaching the same, cancel each interest coupon attached to such bonds by endorsing across the face thereof the word "Cancelled" and the date thereof and shall sign such endorsement. After making such endorsements on such bonds and coupons the county

treasurer shall enter on the record of registration thereof the date such bonds and coupons were so endorsed by him as being paid and cancelled, with the numbers and amounts thereof and the dates when the same would have become due and payable if they had not been so purchased. The county treasurer shall then deliver such bonds, with the cancelled coupons attached, to the county clerk with a report showing the numbers thereof and amount paid on the purchase thereof, and the county clerk shall exhibit such bonds, with attached coupons and report, to the board of county commissioners at their next regular session.

If the board cannot purchase any of the outstanding bonds at such reasonable price then such available money in such sinking and interest fund shall be invested by the county treasurer, under the direction of the board of county commissioners, in other bonds of the county, in warrants of the county or any other county of the state, in bonds or warrants of the state, in bonds or treasury certificates of the United States, or in any time or savings deposits; provided, however, that such sinking and interest funds shall only be invested in such securities as will become due and payable at least sixty (60) days before the date when the bonds of the county of such series or issue will become redeemable.

History: En. Sec. 30, Ch. 188, L. 1931;
amd. Sec. 2, Ch. 46, L. 1939; amd. Sec. 1,
Ch. 12, L. 1963.

Amendment

The 1963 amendment inserted "or in any time or savings deposits" immediately before the proviso in the third paragraph.

16-2050. (4639.1) Investment of county moneys in county warrants and investment of school district or county high school moneys. (1) Except as provided in subsection (2) of this section, whenever the county has under its control any moneys, for which there is no immediate demand, in any special fund subject to deposit which in the judgment of the board of county commissioners it would be advantageous to invest in county warrants, the county commissioners are authorized in their discretion to direct the county treasurer to purchase county warrants of the same county, thereafter issued against funds in which there is not sufficient money to pay such county warrants at the time of issuance, and in case of such purchase the county commissioners shall designate the fund or funds, to be so invested, and shall fix the amount thereof, and shall also designate the county warrant or warrants which are to be purchased by such funds. The county clerk and recorder shall thereupon cause to be attached to or stamped, written or printed upon the warrants so ordered to be purchased a notice to the effect that the county will exercise its preference right to purchase such warrant. The county treasurer shall thereafter when such county warrant is presented to him, purchase the same out of the proper fund as designated by the board of county commissioners, and the warrant so purchased shall be registered as other county warrants, and bear interest as provided by law. When the designated amounts have been invested the county treasurer shall notify the county clerk and recorder. Public funds realized from the sale of bonds by a county for the purpose of constructing public buildings, or for other construction, may be invested in any time or savings deposits, United States certificates of indebtedness,

United States treasury notes or United States treasury bonds having a maturity date of one (1) year or less when emergency conditions, beyond the control of the county commissioners, exist which preclude the construction of the projects for which the bonds were issued at the time such investments are made.

(2) Whenever the county has under its control any moneys realized from the sale of bonds by a school district or county high school for the purpose of construction, for which there is no immediate demand, which in the judgment of the governing body of the school district or county high school it would be advantageous to invest in any time or savings deposits or in short-term obligations of the United States of America, such governing body may in its discretion direct the county treasurer to make such investments. Interest earned from such investments shall be credited to the sinking fund of the said school district or county high school, notwithstanding the provisions of subsection (6) of section 16-2618, Revised Codes of Montana, 1947.

History: En. Sec. 1, Ch. 144, L. 1927; amd. Sec. 1, Ch. 151, L. 1951; amd. Sec. 1, Ch. 223, L. 1961; amd. Sec. 1, Ch. 13, L. 1963.

Compiler's Note

Section 2 of Ch. 223, Laws 1961, amended sec. 75-3922.

Amendments

The 1961 amendment at the beginning of the section, inserted "(1) Except as

provided in subsection (2) of this section"; and added subd. (2).

The 1963 amendment inserted "any time or savings deposits" in the last sentence of subsection (1) and in the first sentence of subsection (2); inserted "the sinking fund of" after "credited to" in the second sentence of subsection (2); and deleted the words "building fund" which followed "county high school" in the second sentence of subsection (2).

CHAPTER 24—COUNTY OFFICERS—QUALIFICATIONS —GENERAL PROVISIONS

- Section 16-2414. What offices to be kept open at county seat.
 16-2428. County recording, filing, etc. — photostatic or other mechanical process authorized.
 16-2429. Substitution of reproduction as public record.
 16-2430. Admissibility into evidence—preparation of enlarged copy.
 16-2431. Reproduction of record or document in duplicate—storage of copy—display of copy.

16-2403. (4725) County officers enumerated.

Cross-Reference

Group insurance for county officers and employees, authority, contribution, sec. 11-1024.

16-2406. (4728) County and other officers, when elected, etc.

Appointment to Fill Vacancy

Held: that county commissioners who appointed a person in November to the office of county attorney to take office in January was not acting to forestall the

rights and prerogatives of the board which would be in office in January since only one of the members would be new in January. State ex rel. Koch v. Lexcen, 131 M 161, 308 P 2d 974.

16-2409. (4731) County and township officers may generally appoint, etc.

References

Cited or applied in State v. Cockrell, 131 M 254, 309 P 2d 316, 319.

16-2414. (4736) What offices to be kept open at county seat. The sheriff, the county clerk, the clerk of the district court, the treasurer, and county attorney, the county auditor in counties where such officer is maintained and the county assessor must keep their offices open for the transaction of business from 8:00 o'clock A. M. until 5 o'clock P. M. continuously every day in the year except holidays and Saturdays, provided however, that the said offices enumerated herein shall be kept open on Saturdays and on holidays and at other times when the business of said offices requires them to be kept open.

The county superintendent of schools shall keep his office open from 8:00 o'clock A. M. until 5 o'clock P. M. every day when he is not engaged in the supervision of schools except on holidays and on Saturdays, provided that when the county superintendent has a deputy or clerk the office shall be kept open from 8:00 o'clock A. M. until 5 o'clock P. M. every day except holidays and except Saturdays. Said office shall be kept open at all times as business may require.

This act shall not apply to counties operating under the county manager plan.

History: En. Sec. 4323, Pol. C. 1895; re-en. Sec. 2968, Rev. C. 1907; re-en. Sec. 4736, R. C. M. 1921; amd. Sec. 1, Ch. 108, L. 1949; amd. Sec. 1, Ch. 199, L. 1957. Cal. Pol. C. Sec. 4116.

Repealing Clause

Section 2 of Ch. 199, Laws 1957 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 199, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.

Amendment

The 1957 amendment changed the office hours from 9:00 A. M. to 8:00 A. M. and authorized Saturday closing. Formerly the office hours were 9:00 A. M. to 5:00 P. M. while the office could be closed Saturday afternoons only. For section prior to amendment see parent volume.

16-2428. County recording, filing, etc.—photostatic or other mechanical process authorized. Whenever any officer of any county is required or authorized by law to record, copy, file, recopy or replace any document, plat, paper, written instrument, or book, on file or of record in his office, he may do so by photostatic, microphotographic, microfilm, or other mechanical process which produces a clear, accurate, and permanent copy or reproduction of the original document, plat, paper, written instrument, or record, in accordance with standards not less than those now approved for permanent records by the National Bureau of Standards.

History: En. Sec. 1, Ch. 117, L. 1959.

Title of Act

An act to provide for the recordation of instruments by photostatic, microphotographic or microfilm; to provide for the disposal of original recorded instruments when reproductions are substituted

therefor; to provide for copies of destroyed or disposed of originals being admissible as evidence in courts and proceedings; to provide for identification, indexing and safekeeping of copies of instruments and to provide for a repealing clause.

16-2429. Substitution of reproduction as public record. Any such document, plat, paper, written instrument or book reproduced as provided in section 1 [16-2428] of this act, the original of which is not less than ten (10) years old, can be disposed of or destroyed only upon order of the

district or probate court having jurisdiction, and the reproductions substituted therefor as public records.

History: En. Sec. 2, Ch. 117, L. 1959.

16-2430. Admissibility into evidence—preparation of enlarged copy. The photostatic, microphotographic or microfilmed copy of any such record destroyed or disposed of as herein authorized, or a certified copy thereof, shall be admissible as evidence in any court or proceeding, and shall have the same force and effect as though the original record had been produced and proved. It shall be the duty of the custodian of such records to prepare enlarged typed or photographic copies of the records whenever their production is required by law.

History: En. Sec. 3, Ch. 117, L. 1959.

16-2431. Reproduction of record or document in duplicate—storage of copy—display of copy. Whenever any record or document is copied or reproduced by microphotographic or microfilm, or other mechanical process as herein provided it shall be made in duplicate, and the custodian thereof shall place one copy, the contents thereof being first duly identified and indexed, in a fireproof vault or fireproof storage place, and he shall retain the other copy in his office with suitable equipment for displaying such record by projection to not less than its original size or for preparing, for persons entitled thereto, to copies of the record.

History: En. Sec. 4, Ch. 117, L. 1959.

Repealing Clause

Section 5 of Ch. 117, Laws 1959 repealed all acts and parts of acts in conflict therewith.

**CHAPTER 26—COUNTY TREASURER—DUTIES AS TO WARRANTS
AND OTHER COUNTY FINANCES**

Section 16-2618. Deposit of public funds by county, city and town treasurers.

16-2618. (4767) Deposit of public funds by county, city and town treasurers. (1) It shall be the duty of all county, city and town treasurers to deposit all public moneys in their possession and under their control in any solvent bank or banks located in the county, city or town of which such treasurer is an officer, subject to national supervision or state examination as the board of county commissioners in the case of a county, or of the council in the case of a city or town, may designate, and no other. The treasurer shall take from such bank such security as the board of county commissioners, in the case of a county, or the council, in the case of a city or town, may prescribe, approve and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits, together with the interest on any time or savings deposits, provided that said board of county commissioners or city or town council is hereby authorized to deposit such public moneys not necessary for immediate use by such county, city or town with any bank authorized herein above in a savings or time deposit; and provided that said board of county commissioners, or city or town council is hereby authorized to invest such public

moneys not necessary for immediate use by such county, city or town, in direct obligations of the United States government, payable within not to exceed one hundred eighty (180) days from the time of such investment.

(2) Said board of county commissioners, city or town council may require security for only such portion of deposits as is not guaranteed or insured according to law. Such securities shall consist of bonds of some surety company authorized to do business in the state of Montana, or bonds guaranteed by such companies directly or indirectly, bonds and securities of the United States government and its dependents, bonds and warrants of the state of Montana or of any county, city, town or school district of Montana, Federal Land Bank bonds, bonds of other states and counties of other states, bonds of the Dominion of Canada, and Canadian Provinces, and other Canadian bonds guaranteed by the Canadian government or provinces thereof, and bonds issued in the United States of America, which are quoted on the New York market, which shall be acceptable at not to exceed ninety per centum (90%) of such market quotation.

(3) When negotiable securities are furnished, such securities may be placed in trust and the trustee's receipt may be accepted in lieu of the actual securities when such receipt is in favor of the treasurer, his successors and the state of Montana, and the form of receipt and the trustee have been approved by the state examiner. All warrants or other negotiable securities must be properly assigned or endorsed in blank. It shall be the duty of the board of county commissioners in the case of county funds, or the council in the case of funds of a city or town, upon the acceptance and approval of any of the above-mentioned bonds or securities, to make a complete minute entry of such acceptance and approval upon the record of their proceedings, and such bonds and securities shall be reappraised at least quarter annually thereafter.

(4) When more than one bank is available in any county, for the deposit of county funds, or in any city or town for the deposit of city or town funds, such deposits shall be distributed ratably among all of such banks qualifying therefor, substantially in proportion to the paid-in capital and surplus of each such bank willing to receive such deposits under the terms of this act, and it shall be the duty of said county, city or town treasurer to prorate all such deposits among all of the banks qualified to receive the same as in this act provided, to the end that an equitable distribution of such deposits shall be maintained.

(5) Whenever it shall come to the attention of the state examiner that the funds of any county, city or town are not properly distributed as provided in this act, the state examiner shall order the treasurer of such county, city or town to distribute said funds in accordance herewith, and if such treasurer shall refuse or neglect to comply with such order, it shall be the duty of the state examiner to institute proceedings against such treasurer at the cost of the county, city or town of which such treasurer is an officer, on the official bond of such treasurer. If no such bank exists in the county, city or town, or if any bank or banks existing therein fails or refuses to qualify under the terms of this act to receive such de-

posits, then and in such case, or in either of such cases, such moneys as have not been accepted by any bank or banks within said county, city or town, shall be deposited under the terms of this act, in the bank or banks most convenient to such county, city or town, willing to accept such deposits under the terms of this act, and qualified as above provided. Any bank or banks receiving such deposits, shall, through its president and cashier, make a statement quarter annually of account, under oath, showing all such moneys that have been deposited with such bank during the quarter, the amount of daily balance in dollars, and the amount of interest by such bank or banks credited or paid therefor, and showing that neither such bank nor any officer thereof, nor any person for it, has paid or given any consideration or emolument whatsoever to the treasurer or to any other person other than the interest provided for herein, for or on account of the making of such deposits, with any such bank. All such deposits shall be subject to withdrawal by the treasurer in such amounts as may be necessary from time to time, and no deposit of funds shall be made, or permitted to remain in any bank, until the security for such deposits shall have been first approved by the board of county commissioners in the case of county funds, or by the council in the case of city or town funds, and delivered to the treasurer.

(6) All interest paid and collected on such deposits or investments shall be credited to the general fund of the county, city or town to whose credit such funds are deposited. Where moneys shall have been deposited in accordance with the provisions of this act, the treasurer shall not be liable for loss on account of any such deposit that may occur through damage by the elements or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct.

(7) Any bank pledging securities as provided in this act at any time it deems ^{so per} advisable or desirable may substitute like securities for all or any part of the securities pledged. The collateral so substituted shall be approved by the governing body of the county, city or town at its next official meeting. Such securities so substituted shall at the time of substitution be at least equal in principal amount to the securities for which substitution is made. In the event that the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the county, city or town and to the depository bank, a receipt specifically describing and identifying both the securities so substituted and those released and returned to the depository bank.

History: Ap. p. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R. C. M. 1921; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963. Cal. Pol. C. Sec. 4161.

Amendments

The 1957 amendment in subd. (1) deleted a former second sentence which read "The sums so deposited shall bear uniform interest at the rate of not more than two per centum (2%) per annum, payable quarter annually"; deleted in the present second sentence the words "on demand" which appeared between the words "deposits" and "together"; and after the words "together with interest" deleted the word "thereon" and added the words

"on any time or savings deposits * * *" to end of subd. (1); in subd. (6) inserted the words "or investments" between the words "deposits" and "shall"; and deleted the words "and approval" which appeared after "passage" in the proviso to former subd. (7).

The 1961 amendment reinstated in the proviso to former subd. (7) the words "and approval" which had been deleted by the 1957 amendment; and added a new subd. (8) which, as amended, now appears as subd. (7).

The 1963 amendment inserted the words "savings or" before "time deposit" in the second sentence of subd. (1); deleted the words "as evidenced by certificates of deposit or deposits, which by agreement may not be withdrawn on less than thirty (30) days' notice by the said board of county commissioners, or city or town council" which followed "time deposit" in the second sentence of subd. (1); deleted from the second sentence of subd. (2) the words "personal bonds, as hereinafter provided, when accompanied by a sworn statement of the resources and liabilities of each of the sureties thereon, which shall be attached and made a part of the bond" which followed the clause pertaining to Canadian-guaranteed bonds; deleted former subd. (7), which read:

"No personal bond shall be accepted except when such bond is for the purpose of renewing a personal bond now in effect, and from and after December 31, 1930, personal bonds shall not be considered as acceptable security; provided, further, that from and after the passage and approval of this act, no new or additional deposit accounts shall be opened by any treasurer under any personal bond"; redesignated former subd. (8) as subd. (7); inserted "like" between "substitute" and "securities" in the first sentence of subd. (7); substituted "Such securities" for "Such security" at the beginning of the third sentence of subd. (7); and substituted "be at least equal in principal amount to the securities for which substitution is made" for "have a market value sufficient together with the market value of the original securities for which no substitution is made to equal or exceed one hundred ten dollars (\$110.00) for every one hundred dollars (\$100.00) of public deposits" at the end of the third sentence of subd. (7).

Repealing Clause

Section 2 of Ch. 50, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 27—SHERIFF

Section 16-2723. Mileage and expense of sheriff.

16-2702. (4774) Duties of sheriff.

References

Husky Hi Power, Inc. v. Schmidt, — M —, 372 P 2d 142, 144.

16-2707. (4779) Return prima facie evidence.

Evidence to Contradict Return

A sheriff's return stating that he offered land for sale in separate parcels, as required by the statute, is prima-facie evidence of the facts stated therein and may be overcome only by clear, unequivocal, and convincing evidence. An affidavit later executed by the sheriff and

stating that he did not offer the land in separate parcels, but containing no excuse, explanation, or suggestion of mistake in the return, may be found not to be such clear, unequivocal, and convincing evidence. *Husky Hi Power, Inc. v. Schmidt*, — M —, 372 P 2d 142, 144.

16-2708. (4780) Penalty for nonreturn of process.

References

Husky Hi Power, Inc. v. Schmidt, — M —, 372 P 2d 142, 144.

16-2709. (4781) Liability for refusing to levy or sell.

References

Cited or applied in *Stokke v. Graham*, 129 M 96, 281 P 2d 1025, 1027.

16-2723. (4885) Mileage and expense of sheriff. Sheriffs delivering prisoners at the state prison or at the state reform school, or insane persons at the state insane asylum, shall receive actual expenses necessarily incurred in their transportation, which shall include the expenses of the sheriff in going and returning from such institution. They shall take vouchers for every item of expenses incurred by them in such transportation, the amount of which expenses, as shown by the said vouchers when served by said sheriff, shall be audited and allowed by the state board of examiners or by the board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the state or counties, and no other or further compensation shall be received by sheriffs for such expenses, provided that in determining the actual expense, if travel be by a privately owned vehicle, the mileage rate shall be allowed as herein provided. While in the discharge of his duties, both civil and criminal, the sheriff shall receive eleven cents (11¢) per mile for each and every mile actually and necessarily traveled; and for transporting any person by order of court, except as hereinbefore provided, he shall receive eleven cents (11¢) additional per mile, the same to be in full for transporting and dieting of such person during such transportation; provided that where more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one mileage shall be charged. The county shall not be liable for, nor shall the board of county commissioners pay for any claim of the sheriff or other officer, for any other expense incurred in travel or for subsistence, in cases where mileage is allowed under this section; the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work.

History: En. Sec. 1, Ch. 86, L. 1905; re-en. Sec. 3137, Rev. C. 1907; re-en. Sec. 4885, R. C. M. 1921; amd. Sec. 3, Ch. 121, L. 1941; amd. Sec. 1, Ch. 59, L. 1949; amd. Sec. 1, Ch. 82, L. 1957.

Compiler's Note

Section 2 of Ch. 82, Laws 1957 amended sec. 25-226. Section 3 was a general repealing clause and section 4 made the act

effective upon its approval. Approved March 2, 1957.

Amendment

The 1957 amendment increased the rate received per mile from nine cents to eleven cents and in the last sentence deleted the words "team or horse hire, or" which appeared immediately before the words "any other expense."

CHAPTER 28—COUNTY JAILS

16-2803. (12468) County jails, by whom kept and for what used.

References

Cited or applied in *State v. MacLean*, 129 M 500, 291 P 2d 250, 252.

16-2807. (12472.1) Sheriff must receive federal prisoners.

References

Cited or applied in *State v. MacLean*, 129 M 500, 291 P 2d 250, 252.

CHAPTER 29—COUNTY CLERK

- Section 16-2903. Recordation of certain instruments declared proper.
 16-2905. Indexes to be kept.
 16-2922. Seed and threshers' liens to be retained eight years from and after extinction of lien.
 16-2923. Destruction of records, when allowed.
 16-2926. Membership in associations and organizations—payment from county funds.

16-2903. (4797) Recordation of certain instruments declared proper.

All instruments which have heretofore been filed for record in the several recorders' offices of the state of Montana, including all instruments which were offered for record pursuant to the previous section, which have been recorded in the offices of the recorders of the several counties by being correctly copied, separately, in large and well-bound, or to be bound, separate books, either in fair hand or by printing or by typewriting, or by the use of prepared blank forms, or by being so inscribed or printed on a single loose-leaf or leaves of a book, which leaf or leaves have heretofore or are to become a permanent part of any such book or volume, which, when completed, has or shall have the pages thereof securely locked, sealed, or bound into the volume, shall be and are hereby declared to be properly recorded under the laws of the state of Montana.

All instruments included in section 1 above, may be recorded and preserved by use of microfilm in lieu of handwriting, typewriting, or printing, and the same shall be and are hereby declared to be properly recorded under the laws of the state of Montana.

History: En. Sec. 1, Ch. 138, L. 1917;
 re-en. Sec. 4797, R. C. M. 1921; amd. Sec.
 1, Ch. 116, L. 1959.

Amendment

The 1959 amendment added the second paragraph to this section.

Compiler's Note

The reference in the second paragraph to section 1 above apparently is a reference to the first paragraph of this section.

Cross-Reference

Recording of documents and records by photostatic or other process, secs. 16-2428 to 16-2431.

16-2905. (4799) Indexes to be kept. Every county clerk, as ex officio recorder, must keep:

1. An index of deeds, grants, and transfers, and contracts to sell or convey real estate, labeled "Grantors," each page divided into four columns, headed respectively: "Names of grantors," "Names of grantees," "Date of deeds, grants, transfers, or contracts," and "Where recorded";
2. An index of deeds, labeled "Grantees," each page divided into four columns, headed respectively: "Names of grantees," "Names of grantors," "Date of deeds, grants, transfers, or contracts," and "Where recorded";
3. An index of mortgages, labeled "Mortgages of real property," with the pages thereof divided into six columns, headed respectively: "Names of Mortgagor," "Names of mortgagees," "Dates of mortgages," "Where recorded," "When filed," "When canceled";
4. An index of mortgages, labeled "Mortgages of real property," with the pages thereof divided into six columns, headed respectively: "Names of Mortgagees," "Names of mortgagors," "Date of mortgage," "Where recorded," "When filed," "When canceled";

5. An index of mortgages, labeled "Releases of mortgages of real property—Mortgagees," with the pages thereof divided into six columns, headed respectively: "Parties whose mortgages are released," "Parties releasing," "Date of release," "Where recorded," "Date of mortgages released," "Where mortgages released are recorded."

6 to 26. * * * [Same as parent volume.] ✓ *See PV*

27. An index to financing statements as provided in Part 4 of the Uniform Commercial Code—~~Security~~ Transactions. *Secured*

28. A miscellaneous index, in which must be indexed papers not heretofore stated. [Effective January 1, 1965.]

History: En. Sec. 4412, Pol. C. 1895; re-en. Sec. 3033, Rev. C. 1907; re-en. Sec. 4799, R. C. M. 1921; amd. Sec. 11-111, Ch. 264, L. 1963. Cal. Pol. C. Sec. 4236.

Amendment

The 1963 amendment deleted provisions in paragraphs 3, 4, and 5 for indexes to be labeled "Mortgages of personal property" and "Releases of mortgages of personal

property—Mortgagees"; substituted "six columns" for "five columns" in paragraphs 3 and 4; deleted "or 'Where Filed'" which followed "'Where recorded'" in paragraph 5; deleted "or if personal property, 'When filed'" at the end of paragraph 5; made minor changes in phraseology in paragraphs 3, 4, and 5; inserted paragraph 27; and renumbered former paragraph 27 as 28.

16-2917. (4811) Duties of county clerk.

Cross-Reference

Duties regarding issuance of identification cards showing age of 21 reached, secs. 4-506 to 4-508.

16-2921. (4813.2) Repealed.

Repeal

This section (Sec. 1, Ch. 46, L. 1931), authorizing destruction of chattel mortgages, conditional sales contracts and

satisfactions after ten years, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

16-2922. (4813.3) Seed and threshers' liens to be retained eight years from and after extinction of lien. All seed liens and threshers' liens, which have heretofore or shall hereafter be filed for record in the office of any county clerk and recorder of the several counties in the state shall be retained by such county clerk in a file kept by him for such purposes, for a period of eight years from and after the time when said seed lien, or threshers' lien has ceased to be a lien on the property described therein. [Effective January 1, 1965.]

History: En. Sec. 1, Ch. 113, L. 1935; amd. Sec. 11-112, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "chattel mortgages, conditional sales contracts" after "All" at the beginning of the section; deleted "and the office of the regis-

trar of motor vehicles" after "several counties in the state"; deleted "or registrar of motor vehicles" after "such county clerk"; deleted "mortgage, conditional sales contract" after "after the time when said"; and deleted "either by virtue of the original mortgage or any renewal thereof" at the end of the section.

16-2923. (4813.4) Destruction of records, when allowed. Upon the expiration of the period of time specified in section 16-2922, the county clerk and recorder may destroy all seed liens and threshers' liens which

have been preserved for the period of time specified in this act. [Effective January 1, 1965.]

History: En. Sec. 2, Ch. 113, L. 1935; amd. Sec. 11-113, Ch. 264, L. 1963.

and recorder"; and deleted "chattel mortgages, conditional sales contracts" before "seed liens."

Amendment

The 1963 amendment deleted "or registrar of motor vehicles" after "county clerk

16-2926. Membership in associations and organizations—payment from county funds. The county clerk and recorders of the counties of the state of Montana are hereby authorized and empowered to take out county membership in, and to cooperate with, associations and organizations of county clerk and recorders of this state and of other states for the furtherance of good government and the protection of county interests, and to pay for such membership in such associations or organizations out of county funds.

History: En. Sec. 1, Ch. 84, L. 1963.

certain organizations at the expense of the county.

Title of Act

An act to provide that county clerk and recorders may take out memberships in

CHAPTER 31—COUNTY ATTORNEY

16-3101. (4819) Duties of county attorney.

Power of Attorney General to Institute Actions in District Courts

The statutes of this state do not authorize the institution of an action in the district courts by the attorney general on behalf of the state but rather they specifically state that such an action must be brought by the county attorney of the

county, however, under the common-law powers and duties of the attorney general he can institute such an action where the public interest is affected and the state is a party in interest. *State ex rel. Olsen v. Public Service Commission*, 129 M 106, 283 P 2d 594.

CHAPTER 32—COUNTY AUDITOR

Section 16-3201. Creation of office of county auditor.

16-3201. (4824) Creation of office of county auditor. The office of county auditor is hereby created and the same shall exist in all counties of the state of Montana of the first, second, third and fourth classes. Provided, however, that the provisions of this act shall not apply to counties having a population of less than fifteen thousand (15,000) persons according to the last federal census of 1960. In counties of the 5th class where a county auditor has been elected he shall hold office until the expiration of his present term, but no longer.

History: En. Sec. 1, p. 227, L. 1891; re-en. Sec. 4560, Pol. C. 1895; re-en. Sec. 3100, Rev. C. 1907; re-en. Sec. 4824, R. C. M. 1921; amd. Sec. 1, Ch. 117, L. 1923; amd. Sec. 1, Ch. 52, L. 1961.

Effective Date

Section 2 of Ch. 52, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved February 23, 1961.

Amendment

The 1961 amendment added the proviso to the first sentence.

16-3211. (4833) Repealed.**Repeal**

superintendent of the poor, was repealed by Sec. 1, Ch. 51, Laws 1957.

This section (Sec. 10, p. 230, L. 1891), relating to the county auditor as county

CHAPTER 36—CONSTABLE AND JUSTICES OF THE PEACE**Section 16-3605. Justices not to practice law.**

16-3605. (4863) Justices not to practice law. No justice of the peace shall practice law, draw contracts, conveyances, or other legal instruments or documents, nor shall they take any claim or bill for collection, nor act as a collection agent in any sense whatever, nor shall they perform any legal duties other than those prescribed by law as their official duties in the conduct of cases and proceedings in their courts. Any justice of the peace violating any of the provisions in this section shall be deemed guilty of a malfeasance in office, and shall forthwith be removed from his office of justice of the peace, and shall thereafter be disqualified from holding such office.

Provided, however, that a justice of the peace who is an attorney and who is admitted to practice law before the supreme court of the state of Montana may engage in the general practice of law and practice law in all courts in the state of Montana except that such a justice of the peace, his law partner, associate, member, associate or employee of firm of which he is a member shall not represent a party involved in a case filed or tried in his court or in any justice court located in the same township as his court, or which is appealed from said courts.

History: En. Sec. 3, p. 92, L. 1901; re-en. Sec. 3114, Rev. C. 1907; re-en. Sec. 4863, R. C. M. 1921; amd. Sec. 1, Ch. 228, L. 1959.

by justices of the peace in certain instances.

Repealing Clause

Section 2 of Ch. 228, Laws 1959 repealed all acts and parts of acts in conflict with the provisions of this act.

Amendment

The 1959 amendment added the proviso clause authorizing the practice of law

CHAPTER 37—DEPUTY COUNTY OFFICERS**16-3701. (4875) Number of deputies allowed.****History Correction**

History: En. Sec. 1, Ch. 75, L. 1905; re-en. Sec. 3119, Rev. C. 1907; amd. Sec.

2, Ch. 93, L. 1909; amd. Sec. 1, Ch. 119, L. 1909; re-en. Sec. 4875, R. C. M. 1921; amd. Sec. 1, Ch. 69, L. 1953.

16-3705. (4879) Qualifications of deputy sheriffs, marshals, etc.**City Policemen**

A city was not bound by any of the provisions hereof in the appointment of a regular policeman and was not pro-

hibited from appointing a policeman who had not been a resident for six months. *McBroom v. City of Polson*, 137 M 33, 349 P 2d 1023.

CHAPTER 41—COUNTY PLANNING AND ZONING DISTRICTS**16-4101. Planning and zoning districts—commission—creation.****Constitutionality**

This chapter does not contravene Article IV, sec. 1 of the Montana Constitu-

tion as an unlawful delegation of power, since sufficient guidelines are set out. *City of Missoula v. Missoula County*, 139 M

256, 362 P 2d 539, 542, explained in 362 P 2d 1021, 1023; Doull v. Wohlschlager, 139 M 274, 362 P 2d 542, 543.

Petition for Establishment

A board of county commissioners does not have the power to create a planning and zoning district and to make a survey in portions of the county in the absence of a petition by sixty percent of the free-

holders. Doull v. Wohlschlager, — M —, 377 P 2d 758, 762. (Dissenting opinion, — M —, 377 P 2d 758, 766.)

A county wide survey is unnecessary for the establishment of a planning and zoning district unless authorized by the requisite petition under this section. Doull v. Wohlschlager, — M —, 377 P 2d 758, 763. (Dissenting opinion — M —, 377 P 2d 758, 766.)

16-4102. Development pattern.

Composition of District

District court was in error in holding that a planning and zoning district must comprise an area of forty acres none of which are used for grazing, horticulture, agriculture or the growing of timber, since section 16-4107, defining a district, makes no such distinction. Doull v. Wohlschlager, — M —, 377 P 2d 758, 763. (Dissenting opinion — M —, 377 P 2d 758, 766.)

Construction

Since the legislature uses the word "district" in the plural in the second sentence of this section and in the singular in the first sentence, it must be assumed that the legislature knew the difference and intended the use of the singular when so used. Doull v. Wohlschlager, — M —, 377 P 2d 758, 762. (Dissenting opinion — M —, 377 P 2d 758, 766.)

The word "used" in the last sentence of this section is a verb used in a noun phrase as a participial adjective rather than in the past tense of the verb form. When a verb is so used it indicates a present rather than a past meaning. Doull v. Wohlschlager, — M —, 377 P 2d 758, 763. (Dissenting opinion — M —, 377 P 2d 758, 766.)

County Wide Survey

It is unnecessary to make a county wide survey unless so authorized by the requisite petition under 16-4101. Doull v. Wohlschlager, — M —, 377 P 2d 758, 763. (Dissenting opinion — M —, 377 P 2d 758, 766.)

Farm Lands

Lands used for grazing, horticulture, agriculture or the growing of timber at

the time of survey are not thereafter exempt from regulation. Doull v. Wohlschlager, — M —, 377 P 2d 758, 763. (Dissenting opinion — M —, 377 P 2d 758, 766.)

The legislature intended under this section to preserve the identity of farm lands from the encroachment of expanding towns and cities, but only so long as they are so employed. Doull v. Wohlschlager, — M —, 377 P 2d 758, 764. (Dissenting opinion — M —, 377 P 2d 758, 766.)

Maps and Plats

The need for maps and plats under this section would only seem to exist when the planning and zoning commission has divided the district into separate areas within which it is permissible, and other areas within which it is not permissible to erect and maintain certain types of "industries, trades or callings." Such a provision is intended to provide notice where the regulations may vary from block to block and lot to lot. Doull v. Wohlschlager, — M —, 377 P 2d 758, 763. (Dissenting opinion — M —, 377 P 2d 758, 766.)

Residential Units

The planning and zoning commission has complied with the provisions of this section requiring it "to make and adopt a development pattern for the physical and economic development of the planning and zoning district" when it provides for residential expansion and the protection of economic values by restricting the development to residential units. Doull v. Wohlschlager, — M —, 377 P 2d 758, 763. (Dissenting opinion — M —, 377 P 2d 758, 766.)

16-4105. Regulations—appeals—permits for construction.

Appeals

An aggrieved party may appeal any decision of the county commissioners within thirty days after such decision was made

to the district court. Doull v. Wohlschlager, — M —, 377 P 2d 758, 766. (Dissenting opinion — M —, 377 P 2d 758, 766.)

16-4107. "District" defined.

Construction

A district under this section need not comprise an area of forty acres none of which are used for grazing, horticulture, agriculture or the growing of timber.

Doull v. Wohlschlager, — M —, 377 P 2d

758, 763. (Dissenting opinion — M —, 377 P 2d 758, 766.)

This section contemplated districts which would be less than an entire county. Doull v. Wohlschlager, — M —, 377 P 2d 758, 763. (Dissenting opinion — M —, 377 P 2d 758, 766.)

CHAPTER 44—METROPOLITAN SANITARY AND/OR STORM SEWER SYSTEMS

Section 16-4401. Metropolitan sanitary and/or storm sewer districts—resolution of intention—contents.

16-4402. City or town concurrence in resolution—notice.

16-4403. Protests and hearing.

16-4404. Resolution creating district.

16-4405. Description.

16-4406. Federal property omitted from assessment.

16-4407. Method of assessment.

16-4408. Cost of making improvements in special improvement districts—resolution, levy, and assessment.

16-4409. Resolution—notice—hearing.

16-4410. Assessments as lien.

16-4411. Ex-officio commissioners of district—jurisdiction.

16-4412. Federal funds for local public works programs.

16-4413. Applicable provisions of rural improvement district act.

16-4401. Metropolitan sanitary and/or storm sewer districts—resolution of intention—contents. Whenever the public convenience and necessity may require in order to construct sanitary and/or storm sewer systems within any county, and which said sanitary and/or storm sewer systems would serve the inhabitants of any county as well as the inhabitants of any city or town within said county, the board of county commissioners with the approval of the city or town council may create metropolitan sanitary and/or storm sewer districts.

Before creating any metropolitan sanitary and/or storm sewer district the board of county commissioners shall pass a resolution of intention so to do, which said resolution shall designate:

- (a) the proposed name of such district,
- (b) the necessity for the proposed district,
- (c) a general description of the territory or lands to be included within said district, giving the boundaries thereof,
- (d) the general character of the sanitary and/or storm sewer system and its proposed location,
- (e) the name of the engineer who is to have charge of the work, and
- (f) the estimated cost thereof.

History: En. Sec. 1, Ch. 185, L. 1957.

Title of Act

An act relating to the creation of metropolitan sanitary and storm sewer districts

to serve inhabitants of both cities and incorporated towns and rural areas within counties; to empower the county commissioners to create metropolitan sanitary districts with the consent of city or town

councils for the purpose of constructing sanitary or storm sewer systems; providing for the levy and collection of special assessments to pay for the same; and to adequately maintain same and extend payment of installments over any period not exceeding twenty years; to provide for the

issuance of special improvement warrants or bonds in such metropolitan sanitary or storm sewer districts; providing for the powers and duties of the county commissioners in respect thereto; and repealing chapter 292, Laws of 1947.

16-4402. City or town concurrence in resolution—notice. Upon passage of such resolution of intention, the board of county commissioners shall transmit a copy of the same to the executive head of any city or town within the proposed district for consideration by such city or town council, and if the city or town council shall by resolution concur in the resolution of the board of county commissioners a copy of the resolution of concurrence shall be transmitted to the board of county commissioners.

If the city or town council does not concur in the resolution of the board of county commissioners, the board shall have no authority to proceed further with the creation of the district. However, if the city or town council concurs in the resolution of the board of county commissioners, the board must give notice of the passage of its resolutions of intention, and of the concurrence therein by the city or town council, which notice must be published for ten consecutive days in a daily newspaper or in two issues of a weekly newspaper published nearest to the place where such improvement district is to be created, and shall also cause to be posted within the boundaries of such special improvement district, a copy of such notice in three public places, and a copy of such notice shall be mailed to every person, firm or corporation, or the agent of such person, firm or corporation owning property within the proposed district, at his last known place of residence upon the same day such notice is first published or posted.

Such notice must describe the general character of the improvement, or improvements, so proposed to be made, state the estimated cost thereof, and designate the time when, and the place where, the board of county commissioners will hear and pass upon all protests that may be made against the making or maintenance of such improvements, or the creation of such district, and the said notice shall refer to the resolution on file in the office of the county clerk for the description of the boundaries.

History: En. Sec. 2, Ch. 185, L. 1957.

16-4403. Protests and hearing. At any time within thirty days after the date of the first publication of the passage of the resolution or intention, any owner of property liable to be assessed for said work may make written protest against the proposed work. Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of the receipt by him. At the next regular meeting of the board of county commissioners, after the expiration of the time within which said protest may be so made, the board of county commissioners shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, if the protest against the proposed work is made by the owners of more than fifty per cent of the area in the

proposed district, no further proceedings shall be taken by the board of county commissioners.

In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the city, county, and school districts shall be considered the same as any other property in the district. The board of county commissioners may adjourn said hearing from time to time.

History: En. Sec. 3, Ch. 185, L. 1957.

16-4404. Resolution creating district. When no protests have been delivered to the county clerk within thirty days after the date of the first publication of the notice of the passing of the resolution of intention, or when a protest shall have been found by said board of county commissioners to be insufficient, or shall have been overruled, immediately thereupon the board of county commissioners shall be deemed to have acquired jurisdiction to order improvements, but before ordering any of the said proposed improvements, the board of county commissioners shall pass a resolution creating the said metropolitan sanitary and/or storm sewer district in accordance with the resolution of intention theretofore introduced and passed by the board of county commissioners.

History: En. Sec. 4, Ch. 185, L. 1957.

16-4405. Description. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements it shall be sufficient to briefly describe the work or the metropolitan sanitary and/or storm sewer district, or both, and to refer to the resolution of intention for further particulars.

History: En. Sec. 5, Ch. 185, L. 1957.

16-4406. Federal property omitted from assessment. Whenever any lot, piece or parcel of land belonging to the United States or mandatory of the government shall front upon the proposed work or improvement, or is to be included within the district declared by the board of county commissioners in its resolution of intention to be a district to be assessed to pay the cost and expenses thereof, the said board of county commissioners shall in the resolution of intention declare that the said lots, pieces or parcels of land or any of them shall be omitted from the assessment thereto to be made to cover the cost and expenses of said work or improvement, and the cost of said work or improvement in front of said lots, pieces or parcels of land shall be paid by the county from its general fund.

History: En. Sec. 6, Ch. 185, L. 1957.

16-4407. Method of assessment. To defray the cost of installing and maintaining either sanitary or storm sewer systems under the provisions of this act, the board of county commissioners shall adopt the following method of assessment: The board of county commissioners shall assess the entire cost of the improvements against the entire metropolitan sanitary district, and each lot or parcel of land assessed in such district is to

be assessed with that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places.

History: En. Sec. 7, Ch. 185, L. 1957.

16-4408. Cost of making improvements in special improvement districts—resolution, levy, and assessment. To defray the cost of making improvements in any special improvement district, the board of county commissioners shall, by resolution, levy and assess a tax upon all property in the district created for such purpose, by using for a basis for such assessment the method provided for by this act. Such resolution shall contain a description of each lot or parcel of land, with the name of the owner, if known, and the amount of each partial payment, when made, and the day when the same shall become delinquent. The payment of the assessment to defray the cost of constructing any improvements in said metropolitan sanitary and/or storm sewer districts may be spread over a term of not to exceed twenty (20) years, payment to be made in equal installments.

History: En. Sec. 8, Ch. 185, L. 1957.

16-4409. Resolution—notice—hearing. Such resolution, signed by the chairman of the board of county commissioners, shall be kept on file in the office of the county clerk, and a notice signed by the county clerk, stating that the resolution levying a special assessment to defray the cost of making such improvements is on file in the office of the county clerk, subject to inspection, shall be published in at least one publication in a newspaper published nearest to where the special improvement is to be made. Such notice shall state the time and place in which objections to the final adoption of such resolution will be heard by the board of county commissioners, and the time for such hearing shall be not less than five days after the publication of such notice. At the time so fixed, the board of county commissioners shall meet and hear all such objections, and for that purpose may adjourn from day to day and may by resolution modify such assessment in whole or in part. A copy of such resolution, certified by the county clerk, must be delivered to the county treasurer two days after its passage.

History: En. Sec. 9, Ch. 185, L. 1957.

16-4410. Assessments as lien. Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this act, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied, and from and after the date of the passage of the resolution levying such assessment, which lien can only be extinguished by payment of such assessment, with all penalties, costs and interest.

History: En. Sec. 10, Ch. 185, L. 1957.

16-4411. Ex-officio commissioners of district—jurisdiction. The board of county commissioners shall be ex-officio commissioners of the metro-

politan sanitary and/or storm sewer district formed under the provisions of this act, and shall have sole and complete jurisdiction over all drainage structures and sewage treating plants which are now or may be hereafter built and situated within said district. The commission shall be responsible for the proper functioning and maintenance thereof, and for the condition and maintenance of all publicly owned streets, alleys, land, parks or other thoroughfares within the boundaries of such district insofar as such may be affected by the construction or maintenance of the structures under control and jurisdiction of such district.

History: En. Sec. 11, Ch. 185, L. 1957.

16-4412. Federal funds for local public works programs. The board of county commissioners are hereby authorized to apply for, and receive from, the federal government on behalf of said metropolitan sanitary and/or storm sewer district, any moneys that may be appropriated by the congress for aiding in local public works projects, and likewise the board of county commissioners may borrow from the federal government any funds available for assisting in the planning or financing of local public works projects, and repay the same out of the moneys received from the tax levy provided for in this act.

History: En. Sec. 12, Ch. 185, L. 1957.

16-4413. Applicable provisions of rural improvement district act. The provisions of sections 16-1607, 16-1608, 16-1609, 16-1610, 16-1615, 16-1616, 16-1619, 16-1620, 16-1621, 16-1622, 16-1623, 16-1624, 16-1625, 16-1626, 16-1627 and 16-1628, Revised Codes of Montana, 1947, pertaining to the powers and duties of the county commissioners in rural improvement districts shall likewise apply under the provisions of this act.

History: En. Sec. 13, Ch. 185, L. 1957.

Compiler's Note

Section 16-1621, referred to in this section, was repealed by Sec. 1, Ch. 136, Laws 1961.

Repealing Clause

Section 14 of Ch. 185, Laws 1957 read

"Chapter 292, Laws of 1947, is hereby repealed, providing however, that any metropolitan sanitary sewer districts established under the provisions of chapter 292, Laws of 1947, shall be valid, and any obligations incurred thereunder shall in nowise be affected by the repeal of said chapter 292, Laws of 1947."

CHAPTER 45—COUNTY WATER DISTRICTS

- Section 16-4501. Organization of county water districts authorized.
 16-4502. Organization of county water districts.
 16-4503. Petition—boundaries of district—publication.
 16-4504. Time of consideration—final hearing.
 16-4505. Proposition submitted—who may vote—certificate of secretary of state—district deemed incorporated—must hear testimony—suit commenced within one year—election.
 16-4506. Election of directors—term of office.
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- 16-4521. Canvass of returns.
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- 16-4524. Power to construct works across streets, etc.—right of way through state lands.
- 16-4525. Water rates.
- 16-4526. Rate to pay operating expenses.
- 16-4527. Commissioners to levy water taxes.
- 16-4528. Levy and collection of tax.
- 16-4529. Initiative.
- 16-4530. Referendum.
- 16-4531. Adding to district.
- 16-4532. Definitions.
- 16-4533. Exclusion of territory—petition—contents—duties of secretary—hearing—order excluding lands.
- 16-4534. Directors may institute proceedings for exclusion—hearing—referendum.

16-4501. Organization of county water districts authorized. A county water district may be organized and incorporated and managed as herein expressly provided and may exercise the powers herein expressly granted or necessarily implied.

History: En. Sec. 1, Ch. 242, L. 1957.

Title of Act

An act to provide for the incorporation and organization and management of county water districts; to provide for the acquisition of water-rights or construction thereby of water-works; and for the acquisition of all property necessary therefor; and also to provide for the distribution and sale of water by said districts; providing for severability and an effective date.

Constitutionality

The county water district act (16-4501 to 16-4534) is not unconstitutional on the ground that there is an invalid delegation of power by the legislature because in-

adequate standards are provided in the act since the provisions of the act are sufficiently clear, definite, and certain to enable the county water district to know its rights and obligations. *Parker v. County of Yellowstone*, — M —, 374 P 2d 328, 333.

The title of the county water district act (16-4501 to 16-4534) is not defective because it provides only for the construction of waterworks since the provisions in the body of the act for water tax and bond tax are germane to that part of the title dealing with construction of water-works and such taxes are necessary to accomplish the general objects of the bill. *Parker v. County of Yellowstone*, — M —, 374 P 2d 328, 334.

16-4502. Organization of county water districts. The people of any county, or portion of a county, or city and county, whether such portion includes unincorporated territory or not, in the state of Montana, having a population of not less than three hundred (300) inhabitants, may organize a county water district under the provisions of this act by proceeding as herein provided.

History: En. Sec. 2, Ch. 242, L. 1957.

16-4503. Petition—boundaries of district—publication. A petition, which may consist of any number of separate instruments, shall be presented at a regular meeting of the board of commissioners of the county in which the proposed water district is located, signed by the registered

voters within the boundaries of the proposed water district, equal in number to at least ten per centum (10%) of the registered voters of the territory included in such proposed water district. Such petition shall set forth and describe the proposed boundaries of such water district, and shall pray that the same be incorporated under the provisions of this act, and the text of such petition shall be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper printed and published in such county, together with a notice stating the time of the meeting at which same will be presented. The first publication shall be at least two (2) weeks before the time at which the petition is to be presented. When contained upon more than one (1) instrument, one (1) copy only of such petition need be published. No more than five of the names attached to said petition need appear in such publication of said petition and notice, but the number of signers shall be stated.

History: En. Sec. 3, Ch. 242, L. 1957.

16-4504. Time of consideration—final hearing. With such publication there shall be published a notice of the time of the meeting of the board when such petition will be considered and that all persons interested therein may then appear and be heard. At such time the board of commissioners shall hear the petition and those appearing thereon together with such written protests as shall have been filed with the county clerk and recorder prior to such hearing by or on behalf of owners of taxable property situated within the boundaries of the proposed district and may adjourn such hearing from time to time, not exceeding four (4) weeks in all. No defect in the contents of the petition or in the title to or form of the notice or signatures, or lack of signatures, thereto shall vitiate any proceedings thereon, provided such petition or petitions have a sufficient number of qualified signatures attached thereto. On the final hearing said board shall make such changes in the proposed boundaries as may be deemed advisable and shall define and establish such boundaries, but said board shall not modify said boundaries as to exclude from such proposed district any territory which would be benefited by the formation of such district; nor shall any lands which will not, in the judgment of said board, be benefited by such district be included within such proposed district. Any person whose lands are benefited by such district may upon his application, in the discretion of said board, have such lands included within said proposed district.

History: En. Sec. 4, Ch. 242, L. 1957.

16-4505. Proposition submitted—who may vote—certificate of secretary of state—district deemed incorporated—must hear testimony—suit commenced within one year—election. Upon such hearing of said petition, the board of commissioners shall determine whether or not said petition complies with the requirements of the provisions of this act, and for that purpose must hear all competent and relevant testimony offered in support of or in opposition thereto. Such determination shall be entered upon the minutes of said board of commissioners. A finding of the board of commissioners in favor of the genuineness and sufficiency of the petition and notice shall be final and conclusive against all persons except

the state of Montana upon suit commenced by the attorney general. Any such suit must be commenced within one (1) year after the order of the board of commissioners declaring such district organized as herein provided, and not otherwise. Upon the final determination of the boundaries of the district the board of commissioners shall give notice of an election to be held in said proposed water district for the purpose of determining whether or not the same shall be incorporated, the date of which election shall be not more than sixty (60) days from the date of the final hearing of such petition. Such notice shall describe the boundaries so established and shall state the proposed name of the proposed incorporation (which name shall contain the words "_____ county water district"), and this notice shall be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper printed and published in said county. The first publication shall be made at least two (2) weeks before the time at which the election is to be held. At such election the proposition to be submitted shall be: "Shall the proposition to organize _____ county water district under (naming the chapter containing this act) of the acts of the _____ session of the Montana legislature and amendments thereto be adopted?" And the election thereupon shall be conducted, the vote canvassed and the result declared in the same manner as provided by law in respect to general elections, so far as they may be applicable, except as in this act otherwise provided. No person shall be entitled to vote at any election under the provisions of this act unless such person possesses all the qualifications required of electors under the general election laws of the state, and is the owner of taxable real property situated within the boundaries of the proposed district. Within four (4) days after such election the vote shall be canvassed by the board of commissioners. If a majority of the votes cast at such election in each municipal corporation or part thereof and in the unincorporated territory included in such proposed water district shall be in favor of organizing such county water district, said board shall by an order entered on its minutes declare the territory enclosed within the proposed boundaries duly organized as a county water district under the name theretofore designated, and the county clerk shall immediately cause to be filed with the secretary of state and shall cause to be recorded in the office of the county recorder of the county in which such district is situated, each, a certificate stating that such a proposition was adopted. Upon the receipt of such last-mentioned certificate the secretary of state shall, within ten (10) days, issue his certificate reciting that the county water district (naming it) has been duly incorporated according to the laws of the state of Montana. A copy of such certificate shall be transmitted to and filed with the county clerk of the county in which such county water district is situated. From and after the date of such certificate, the district named therein shall be deemed incorporated as a county water district, with all the rights, privileges and powers set forth in this act and necessarily incident thereto. In case less than a majority of the votes cast are in favor of said proposition the organization fails but without prejudice to renewing proceedings at any time in the future.

History: En. Sec. 5, Ch. 242, L. 1957.

16-4506. Election of directors—term of office. At an election to be held within such district under the provisions of this act and the laws governing general elections not inconsistent herewith, the county water district thus organized shall proceed within ninety (90) days after its formation to the election of a board of directors consisting, if there are no municipalities within the boundaries of said district, of five (5) members. In all cases where the boundaries of such water district include any municipality or municipalities, said board of directors, in addition to said five (5) directors to be elected as aforesaid, shall consist of one (1) additional director for each one of said municipalities within such county water district, each such additional director to be appointed by the mayor of the municipality for which said additional director is allowed; and if there be any unincorporated territory within said water district, of one additional director, to be appointed by the said board of commissioners. Any director so elected or appointed shall be a qualified freeholder and a resident of said district. All directors, elected or appointed, shall hold office until the election and qualification or appointment and qualification of their successors. The term of office of directors elected under the provisions of this act shall be four (4) years from and after the date of their election; provided, that the directors first elected after the passage of this act shall hold office only until the election and qualification of their successors as hereinafter provided. The term of office of directors appointed by said mayor or mayors or by said board of commissioners shall be six (6) years from and after the date of appointment. Directors to be first appointed under the provisions of this act shall be appointed within ninety (90) days after the formation of the district. The election of directors of such county water district shall be in every fourth year after its organization, on the fourth Tuesday in March, and shall be known as the "general water district election." All other elections which may be held by authority of this act, or of the general laws, shall be known as special water district election.

History: En. Sec. 6, Ch. 242, L. 1957.

16-4507. Nomination of officers. (1) The mode of nomination and election of all elective officers of such water district to be voted for at any water district election and the mode of appointment of a director or directors by said mayor or mayors or by said board of commissioners shall be as follows and not otherwise.

(2) The name of a candidate shall be printed upon the ballot when a petition of nomination shall have been filed in his behalf in the manner and form and under the conditions hereinafter set forth.

(3) The petition of nomination shall consist of not less than twenty-five (25) individual certificates, which shall read substantially as follows:

PETITION OF NOMINATION

Individual Certificate.

State of Montana }
County of _____ } ss.

Prec. No. _____

I, the undersigned, certify that I do hereby join in a petition for the nomination of _____, whose residence is at _____ for the office of _____ of the _____ county water district to be voted for at the water district election to be held in the _____ county water district on the _____ day of _____, 19__; and I further certify that I am a qualified elector and freeholder residing within said district, and am not at this time a signer of any other petition nominating any other candidate for the above named office; or, in case there are several places to be filled in the above named office, that I have not signed more petitions than there are places to be filled in the above named office; that my residence is at No. _____ street, _____, and that my occupation is _____.

(Signed) _____

State of _____ }
County of _____ } **ss.**

_____, being duly sworn, deposes and says that he is the person who signed the foregoing certificate and that the statements therein are true and correct.

(Signed) _____

Subscribed and sworn to before me this _____ day of _____ 19__.

Notary Public

The petition of nomination of which this certificate forms a part shall, if found insufficient, be returned to _____, at _____, Montana.

(4) Clerk to furnish forms. It shall be the duty of the county clerk to furnish upon application a reasonable number of forms of individual certificates of the above character.

(5) Certificates. Each certificate must be a separate paper. All certificates must be of uniform size as determined by the county clerk. Each certificate must contain the name of one signer thereto and no more. Each certificate shall contain the name of one candidate and no more. Each signer must be a qualified elector residing within said district, must not at the time of signing a certificate have his name signed to any other certificate for any other candidate for the same office, nor, in case there are several places to be filled in the same office, signed to more certificates for candidates for that office than there are places to be filled in such office. In case an elector has signed two or more conflicting certificates, all such certificates shall be rejected. Each signer must verify his certificate and make oath that the same is true, before a notary public. Each certificate shall further contain the name and address of the person to whom the petition is to be returned in case said petition is found insufficient.

(6) Presentation of petition. A petition of nomination, consisting of not less than twenty-five (25) individual certificates for any one candidate, may be presented to the county clerk not earlier than forty-five (45) days nor later than thirty (30) days before the election. The county clerk shall indorse thereon the date upon which the petition was presented to him.

(7) Examination of petition. When a petition of nomination is presented for filing to the county clerk, he shall forthwith examine the same, and ascertain whether or not it conforms to the provisions of this section. If found not to conform thereto, he shall then and there in writing designate on said petition the defect or omission or reason why such petition can not be filed, and shall return the petition to the person named as the person to whom the same may be returned in accordance with this section. The petition may then be amended and again presented to the clerk as in the first instance. The clerk shall forthwith proceed to examine the petition as hereinbefore provided. If necessary, the board of commissioners shall provide extra help to enable the clerk to perform satisfactorily and promptly the duties imposed by this section.

(8) Signer may withdraw name. Any signer to a petition of nomination and certificate may withdraw his name from the same by filing with the county clerk a verified revocation of his signature before the filing of his petition by the clerk, and not otherwise. He shall then be at liberty to sign a petition for another candidate for the same office.

(9) Candidate may withdraw. Any person whose name has been presented under this section as a candidate may, not later than twenty-five (25) days before the day of election, cause his name to be withdrawn from nomination by filing with the county clerk a request therefor in writing, and no name so withdrawn shall be printed upon the ballot. If, upon such withdrawal, the number of candidates remaining does not exceed the number to be elected, then other nominations may be made by filing petitions therefor not later than twenty-five (25) days prior to such election.

(10) Petition filed. If either the original or amended petition of nomination be found sufficiently signed as hereinbefore provided, the clerk shall file the same twenty-five (25) days before the date of the election. When a petition of nomination shall have been filed by the clerk it shall not be withdrawn or added to and no signatures shall be revoked thereafter.

(11) Petitions preserved. The county clerk shall preserve in his office for a period of two years, all petitions of nomination and all certificates belonging thereto, filed under this section.

(12) List of candidates. Immediately after such petitions are filed, the county clerk shall enter the names of the candidates in a list, with the offices to be filled, and shall not later than twenty (20) days before the election certify such list as being the list of candidates nominated as required by the provisions of this act, and the board of commissioners shall cause said certified list of names and the offices to be filled, to be published in the proclamation calling the election at least ten (10) successive days before the election in at least one (1) but not more than three (3) newspapers of general circulation published in the county in which such municipal water district is located. Such proclamation shall conform in all respects to the general state law governing the conduct of general elections now or hereafter in force, applicable thereto, except as otherwise herein provided.

(13) Ballots. Form. The county clerk shall cause the ballots to be printed and bound and numbered as provided by said general state law, except as otherwise required in this act. The ballots shall contain the list of names and the respective offices as published in the proclamation and shall be in substantially the following form:

GENERAL (OR SPECIAL) DISTRICT ELECTION

----- County Water District,
(Inserting date thereof.)

Instructions to Voters: To vote, stamp or write a cross (X) opposite the name of the candidate for whom you desire to vote. All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void. If you wrongly mark, tear or deface this ballot, return it to the inspector of election, and obtain another.

(14) How printed. All ballots printed shall be precisely on the same size, quality, tint of paper, kind of type, and color of ink, so that without the number it would be impossible to distinguish one ballot from another; and the names of all candidates printed upon the ballot shall be in type of the same size and style. A column may be provided on the right-hand side for questions to be voted upon at municipal water district election, as provided for under this act. The names of the candidates for each office shall be arranged in alphabetical order, and nothing on the ballot shall be indicative of the source of the candidacy or of the support of any candidate.

(15) No candidate omitted. The name of no candidate who has been duly and regularly nominated, and who has not withdrawn his name as herein provided shall be omitted from the ballot.

(16) Office. The offices to be filled shall be arranged in the following order: "For director vote for (giving number)."

(17) Voting squares. Half-inch square shall be provided at the right of the name of each candidate wherein to mark the cross.

(18) Spaces below printed names. Half-inch spaces shall be left below the printed names of candidates for each office, equal in number to the number to be voted for, wherein the voter may write the name of any person or persons for whom he may wish to vote.

(19) Votes necessary to elect. In case there is but one person to be elected to an office, the candidate receiving a majority of the votes cast for all the candidates for that office, shall be declared elected: in case there are two or more persons to be elected to an office, as that of director, then those candidates equal in number to the number to be elected, who receive the highest number of votes for such office shall be declared elected.

(20) Failure to qualify. If a person elected fails to qualify, the office shall be filled as if there were a vacancy in such office, as hereinafter provided.

(21) Mode of appointment by mayor. The mode of appointment of director or directors by a mayor, or by a board of commissioners, shall be by certificate of appointment signed by said mayor or mayors, or

issued by said board of commissioners, and transmitted to the board of directors of said county water district.

(22) Informality not to invalidate. No informality in conducting county water district elections shall invalidate the same, if they have been conducted by directors to fill a vacancy, or appointed by a mayor or by this act.

History: En. Sec. 7, Ch. 242, L. 1957.

16-4508. General law to govern. The provisions of the law relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of general elections, so far as they may be applicable, shall govern all water district elections, except as in this act otherwise provided; provided, however, that where a corporation owns taxable real property within the boundaries of the district, the president, vice-president or secretary of such corporation shall be entitled to cast a vote on behalf of the corporation; provided also that an elector owning taxable real property within the district need not reside within the district in order to vote, and provided that the board of commissioners shall canvass the returns of the first election and that thereafter, except as herein provided, the board of directors shall meet as a canvassing board and duly canvass the returns within four (4) days after any water district election, including any water district bond election.

History: En. Sec. 8, Ch. 242, L. 1957; **Amendment**
amd. Sec. 1, Ch. 258, L. 1959.

The 1959 amendment added the first two provisos to this section.

16-4509. Officers subject to recall. Every incumbent of an elective office, whether elected by popular vote for a full term, or elected by the board of directors to fill a vacancy, or appointed by a mayor or by said board of commissioners for a full term, is subject to recall by the voters of any county water district organized under the provisions of this act, in accordance with the recall provisions of sections 11-3220 to 11-3227, Revised Codes of Montana, both inclusive, applicable to officers under the commissioner-manager plan.

History: En. Sec. 9, Ch. 242, L. 1957.

16-4510. Organization of board. The board of directors shall be the governing body of such county water district. It shall hold its first meeting on the sixth Monday after the first general election for the election of directors as herein provided; it shall choose one of its members president, and shall thereupon provide for the time and place of holding its meetings and the manner in which its special meetings may be called. All legislative sessions of the board of directors whether regular or special shall be open to the public. A majority of the board of directors shall constitute a quorum for the transaction of business. The board of directors shall establish rules for its proceedings.

History: En. Sec. 10, Ch. 242, L. 1957.

16-4511. Ordinances—enacting clause—compensation. The board of directors shall act only by ordinance or resolution. The ayes and noes

shall be taken upon the passage of all ordinances or resolutions and entered upon the journal of the proceedings of the board of directors. No ordinance or resolution shall be passed or become effective without the affirmative votes of at least a majority of the total members of the board. The enacting clause of all ordinances passed by the board shall be in these words: "Be it ordained by the board of directors of _____ county water district as follows:" All resolutions and ordinances shall be signed by the president of the board of directors and attested by the secretary. Each of the members of the board of directors shall receive for each attendance at the meetings of the board ten dollars (\$10.00), and shall receive no other compensation. No director, however, shall receive pay for more than three (3) meetings in any calendar month. Any vacancy in the board of directors, whether the vacant office is elective or appointive, shall be filled by the remaining directors.

History: En. Sec. 11, Ch. 242, L. 1957.

16-4512. General manager, secretary and auditor. The board of directors shall at its first meeting, or as soon thereafter as practicable, appoint, by a majority vote, a general manager, a secretary, and an auditor. No director shall be eligible to the office of general manager, secretary, or auditor. The general manager, secretary, and auditor, shall receive such compensation as the board of directors shall determine, and each shall serve at the pleasure of the board.

History: En. Sec. 12, Ch. 242, L. 1957.

16-4513. Informality not to invalidate. No informality in any proceeding or informality in the conduct of any election, not substantially affecting adversely the legal rights of any citizen, shall be held to invalidate the incorporation of any county water district, and any proceeding wherein the validity of such incorporation is denied shall be commenced within three (3) months from the date of the certificate of incorporation, otherwise said incorporation and the legal existence of said county water district, and all proceedings in respect thereto, shall be held to be valid and in every respect legal and incontestable.

History: En. Sec. 13, Ch. 242, L. 1957.

16-4514. Powers of district. Any county water district incorporated as herein provided shall have power:

- (1) To have perpetual succession;
- (2) Sue and be sued. To sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals of competent jurisdiction;
- (3) Adopt seal. To adopt a seal and alter it at pleasure;
- (4) Hold property. To take by grant, purchase, gift, devise, or lease; to hold, use, enjoy, and to lease or dispose of real and personal property of every kind, within or without the district, necessary to the full exercise of its powers;
- (5) Acquire water-works. To construct, purchase, lease, or otherwise acquire, and to operate and maintain water-rights, water-works, canals, conduits, reservoirs, lands and rights useful or necessary to store,

conserve, supply, produce, or convey water for household, domestic or other similar purposes for the benefit of the district;

(6) Store water. To store water for the benefit of the district; to conserve water for future use; to appropriate, acquire and conserve water and water-rights for the purposes of the district; to commence, maintain, intervene in and compromise, in the name of the district, and to assume the costs of any action or proceeding involving or affecting the ownership or use of waters or water-rights within the district used or useful for any purpose of the district or a benefit to any land situated therein; to commence, maintain, intervene in, defend and compromise actions and proceedings to prevent interference with or diminution of the natural flow of any stream or natural subterranean supply of waters used or useful for any purpose of the district or a common benefit to the lands within the district or its inhabitants; and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger the inhabitants or lands of the district;

(7) Lease water-works. To lease of and from any person, firm, or public or private corporation with the privilege of purchase, or otherwise, existing water-rights, water-works, canals or reservoir systems; and to carry on and maintain the same; also to sell water, or the use thereof, for household or domestic use or other similar purposes; and whenever there is a surplus of water to sell or otherwise dispose of the same, to municipalities or towns or to consumers located within or without the boundaries of the district;

(8) Cooperate with United States. To cooperate and contract with the United States under the Federal Reclamation Act of June 17, 1902 and all acts amendatory thereof and supplementary thereto or any other act of Congress authorizing or permitting such cooperation or contract for purposes of construction of works necessary or appropriate for the purposes of the district or for the acquisition, purchase, extension, operation, or maintenance of such works, or for a water supply or for the assumption as principal or guarantor of indebtedness to the United States and to carry out and perform the terms of any contract so made;

(9) Borrow money. To borrow money and incur indebtedness and to issue bonds or other evidence of such indebtedness; also to refund or retire any indebtedness or lien that may exist against the district or property thereof;

(10) Levy taxes. To cause taxes to be levied in the manner provided for herein for the purpose of paying any obligation of the district and to accomplish the purposes of this act in the manner herein provided;

(11) Make contracts. To make contracts, to employ labor and to do all acts necessary for the full exercise of the foregoing powers.

History: En. Sec. 14, Ch. 242, L. 1957.

16-4515. Powers exercised by board. The powers herein enumerated shall, except as herein otherwise provided, be exercised by the board of directors above provided for and elected and appointed as described herein.

History: En. Sec. 15, Ch. 242, L. 1957.

16-4516. Duties of officers of board—depository of funds—officers' bonds. The president shall sign all contracts on behalf of the district and perform such other duties as may be imposed by the board of directors. The secretary shall countersign all contracts on behalf of the district and perform such other duties as may be imposed by the board of directors. The general manager shall have full charge and control of the maintenance, operation and construction of the water-works or water-works system of said water district, with full power and authority to employ and discharge all employees and assistants at pleasure, prescribe their duties, and shall, subject to the approval of the board of directors, fix their compensation. The general manager shall perform such other duties as may be imposed upon him by the board of directors. The general manager shall report to the board of directors in accordance with such rules and regulations as they may adopt. The auditor shall be charged with the duty of installing and maintaining a system of auditing and accounting that shall completely and at all times show the financial condition of the district. He shall draw warrants to pay demands made against the district when such demands have been first approved by at least three (3) members of the board of directors and by the general manager. The board of directors shall also designate a depository or depositaries to have the custody of the funds of the district, all of which depositaries shall give security sufficient to secure the district against possible loss, and who shall pay the warrants drawn by the auditor for demands against the district under such rules as the directors may prescribe. The general manager, secretary and auditor, and all other employees or assistants of said district who may be required so to do by the board of directors, shall give bonds to the district conditioned for the faithful performance of their duties as the board of directors from time to time may provide.

History: En. Sec. 16, Ch. 242, L. 1957.

16-4517. Bonded indebtedness. Whenever the board of directors deem it necessary for the district to incur a bonded indebtedness, it shall by a resolution so declare and state the purpose for which the proposed debt is to be incurred, the land within the district to be benefited thereby, the amount of debt to be incurred, the maximum term the bonds proposed to be issued shall run before maturity, which shall not exceed forty (40) years, and the maximum rate of interest to be paid, which shall not exceed seven per cent (7%) per annum, and the proposition to be submitted to the electors.

History: En. Sec. 17, Ch. 242, L. 1957.

16-4518. Election. The board of directors shall fix a date upon which an election shall be held for the purpose of authorizing said bonded indebtedness to be incurred. It shall be the duty of the board of directors to provide for holding such special election on the day so fixed, in accordance with the general election laws of the state, so far as the same shall be applicable, except as herein otherwise provided.

History: En. Sec. 18, Ch. 242, L. 1957.

16-4519. Notice. Such board of directors shall give notice of the holding of such election, which notice shall contain the resolution adopted by the board of directors of the water district, boundaries of voting precincts, which shall include therein only the lands to be benefited, as stated in such resolution, the location of polling places, and the names of the officers selected to conduct the election, who shall consist of one judge, one inspector and two clerks in each precinct.

History: En. Sec. 19, Ch. 242, L. 1957.

16-4520. Publication. Such notice shall be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper published in the county wherein such water district is located, which newspaper shall be designated by the board of directors. Every qualified elector, owning taxable real property, within such voting precincts, but no others, shall be entitled to vote at such election. All the expenses of holding such election shall be borne by the district.

History: En. Sec. 20, Ch. 242, L. 1957; amd. Sec. 2, Ch. 258, L. 1959.

Amendment

The 1959 amendment substituted "in the county wherein such water district is located" for "in such water district";

deleted a provision which read "and if there is no newspaper printed in such water district, then in some newspaper of general circulation published in the county in which the district is situated" and substituted "owning taxable real property" for "residing."

16-4521. Canvass of returns. The returns of such election shall be made to and the votes canvassed by said board of directors on the first Monday following said election, and the results thereof ascertained and declared in accordance with the general election laws of the state, so far as they may be applicable, except as herein otherwise provided. The secretary of the board of directors, as soon as the result is declared, shall enter in the records of such board a statement of such results. No irregularities or informalities in conducting such election shall invalidate the same, if the election shall have otherwise been fairly conducted. In all respects not otherwise provided for herein, said election shall be called, managed and directed as is by law provided for general elections in this state applicable thereto, except as herein otherwise provided.

History: En. Sec. 21, Ch. 242, L. 1957.

16-4522. Two-thirds vote necessary. If from such returns it appears that more than two-thirds of the votes cast at such election were in favor of and assented to the incurring of such indebtedness, then the board of directors may, by resolution, at such time or times as it deems proper, provide for the form and execution of such bonds and for the issuance of any part thereof, and may sell or dispose of the bonds so issued at such times or in such manner as it may deem to be to the public interest.

History: En. Sec. 22, Ch. 242, L. 1957.

16-4523. Value of bonds issued. Any bonds issued by any district organized under the provisions of this act are hereby given the same force, value and use as bonds issued by any municipality and shall be exempt from all taxation within the state of Montana.

History: En. Sec. 23, Ch. 242, L. 1957.

16-4524. Power to construct works across streets, etc.—right of way through state lands. The board of directors shall have power to construct works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch or flume which the route of said works may intersect or cross; provided, such works are constructed in such manner as to afford security for life and property, and said board of directors shall restore the crossings and intersections to their former state as near as may be, or in manner not to have impaired unnecessarily their usefulness. The right of way is hereby given, dedicated and set apart to locate, construct and maintain said works over and through any of the lands which are now or may be the property of this state, and to have the same rights and privileges appertaining thereto as have been or may be granted to the municipalities within the state.

History: En. Sec. 24, Ch. 242, L. 1957.

16-4525. Water rates. The board of directors shall fix all water rates, and shall through the general manager collect the charges for the sale and distribution of water to all users.

History: En. Sec. 25, Ch. 242, L. 1957.

16-4526. Rate to pay operating expenses. The board of directors in the furnishing of water shall fix such rate as will pay the operating expenses of the district, provide for repairs and depreciation of works owned or operated by it, pay the interest on any bonded debt, and, so far as possible, provide a sinking or other fund for the payment of the principal of such debt as it may become due; it being the intention of this section to require the district to pay the interest and principal of its bonded debt from the revenues of the district.

History: En. Sec. 26, Ch. 242, L. 1957.

16-4527. Commissioners to levy water taxes. If, from any cause, the revenues of the district shall be inadequate to pay the interest or principal of any bonded debt as it becomes due or any other expenses or claims against the district, then the board of directors must, at least fifteen (15) days before the first day of the month in which the board of commissioners of the county, or city and county, in which such water district is located, is required by law to levy the amount of taxes required for county or city and county purposes, furnish to the board of commissioners, and to the auditor, respectively, an estimate in writing of the amount of money required by the district for the payment of the principal of or interest on any bonded debt as it becomes due, and of the amount of money required to establish reasonable reserve funds for either of said purposes, together with a description of the lands benefited thereby, as stated by the board of directors in the resolution declaring the necessity to incur such bonded indebtedness, and also of the amount of money required by the district for any other purpose in this section set forth, and the board of commissioners of such county or city and county must annually, at the time and in the manner of levying other county or city and county taxes and until any such bonded debt is fully paid, levy upon the lands so benefited and cause to be collected, a tax sufficient for the payment thereof to be known

as the "_____ county water district bond tax"; and until all other expenses or claims are fully paid, levy upon all of the lands of the district and cause to be collected a tax sufficient for the payment thereof to be known as the "_____ county water district water tax."

When the amount of money required for any purpose in this section enumerated has been determined, each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its area bears to the total area of all of the lands to be assessed; or said assessment may, at the option of the board of county commissioners, be based upon the taxable valuation, as stated in the last completed county assessment roll, of the lots or parcels of land, exclusive of improvements thereon, within said district, in which case, each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all of the lands to be assessed.

When the written estimate of the amount of money required has been delivered to the board of commissioners, said board shall give notice of its intention to levy and collect a tax sufficient for the payment thereof. Such notice shall be given:

(1) By posting notice thereof in five (5) public places within the boundaries of the lands upon which the tax is to be levied, and

(2) By publishing a copy of the notice for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper published in the county wherein the district is located.

(3) By forwarding regular first class mail or registered mail, at least ten (10) days prior to the hearing provided for in paragraph (d) of this section, a copy of the notice addressed to the owners of taxable real property within the district as shown by the current assessment book on file in the office of the assessor of the county or counties the boundaries of which include taxable real property of the district.

The legislative assembly hereby finds, determines and declares that the giving of notice in accordance with paragraphs (1), (2) and (3) of this section is reasonably calculated to inform the owners of taxable real property located within the boundaries of the district of the hearing provided for in paragraph (d) of this section, and that the giving of any further notice is impracticable and is unnecessary to the assurance of due process of law to such property owners.

Such notice shall state:

(a) The amount of money required;

(b) The method of assessment which the board of commissioners intends to employ;

(c) The boundaries or description of the lands to be assessed, which said boundaries or description may be recited in full, or may be given by reference to any instrument on file or of record in the office of the clerk and recorder, treasurer or assessor of the county or counties in which the district or part thereof is situate; and

(d) The time when and the place where, the board of commissioners will hear and pass upon all protests that may be made against the levy of the tax or any matter pertaining thereto, which said hearing shall

be had no less than fifteen (15) days after the last publication of the notice.

At the time and place designated for said hearing any owner of property situated within the area to be assessed may appear and protest the levy of the tax or any matter pertaining thereto. All protests must be heard, considered and ruled upon by the board of commissioners. The board of commissioners may adjourn said hearing from time to time.

Where such tax is, for any reason, deemed unlawful by the person whose property is taxed, whether he has protested the same at the hearing above provided or not, he may pay the tax or the installments thereof under protest in the manner provided by section 84-4502, Revised Codes of Montana, 1947, and thereupon, and within the time prescribed and in the manner provided by said section 84-4502, may commence an action to recover such tax, or installments, and in such action contest and litigate the payment of such tax on the same grounds and for the same reasons that he has stated in his written protest, and for no other reasons and on no other grounds; provided, that all of the provisions of said section 84-4502 for the retention or refunding of taxes paid under protest shall apply to taxes paid under protest under this section.

History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963.

Amendments

The 1959 amendment, in the second paragraph, deleted a phrase "where the water district is located more than one (1) mile from the boundary of an incorporated city or town" which appeared after the words "total area of all of the lands to be assessed; or"; substituted "taxable valuation, as stated in the last completed county assessment roll, of the lots or parcels of land, exclusive of improvements thereon, within said district" for "the assessed value of the lots or parcels of land within said district" and added all the remaining portion of this section.

The 1961 amendment deleted the word "minimum" before "amount of money required" in two places in the first paragraph, near the beginning of the second paragraph, and near the beginning of the third paragraph; inserted the words "and of the amount of money required to establish reasonable reserve funds for either of said purposes" near the middle of the first paragraph; and made a minor change in phraseology in the first paragraph.

The 1963 amendment inserted "regular first class mail or" near the beginning of clause (3); and added to clause (c) all of the language beginning with "which said boundaries."

Separability Clauses

Section 5 of Ch. 258, Laws 1959 and Sec. 3 of Ch. 46, Laws 1961 read "If any

provision contained in this act shall for any reason be held invalid, such decision shall not invalidate the remaining portions of this law."

Section 2 of Ch. 68, Laws 1963 read "If any section, paragraph, sentence, clause or provision of this act shall for any reason be held invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, paragraphs, sentences, clauses or provisions of this act."

Repealing Clauses

Section 4 of Ch. 258, Laws 1959 and Sec. 2 of Ch. 46, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Section 3 of Ch. 68, Laws 1963 read "All acts, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any act, or part thereof, heretofore repealed."

Effective Dates

Section 6 of Ch. 258, Laws 1959 provided the act should be in effect from and after the date of passage and approval. Approved March 13, 1959.

Section 4 of Ch. 46, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved February 23, 1961.

Section 4 of Ch. 68, Laws 1963 provided the act should be in full force and effect from and after the date of passage and approval. Approved February 25, 1963.

Constitutionality

This section is not unconstitutional because it delegates to a corporation the power to tax for the general health, safety, and welfare of property owners without regard to benefits to the property so taxed in violation of Const., Art. V, sec. 36. *Parker v. County of Yellowstone*, — M —, 374 P 2d 328, 331.

The owners of land, which had been included in a county water district organized in August 1958 under Laws 1957, ch. 242 (16-4501 to 16-4534) were not deprived of due process because no adequate notice was given of the hearing to create the district since the inclusion of land in the

improvement district was not a taking of property. Rights of the owners were not affected until the levy of assessment in August 1960, at which time the provisions of this section were such as to afford them due process. *Parker v. County of Yellowstone*, — M —, 374 P 2d 328, 335.

The manner of assessing property under this section on an area basis does not violate the fourteenth amendment to the federal constitution where under such method the property assessed would be enhanced to the extent of the burden imposed. *Parker v. County of Yellowstone*, — M —, 374 P 2d 328, 336.

16-4528. Levy and collection of tax. Such taxes for the payment of any such bonded debt shall be levied on the property benefited thereby, as stated by the board of directors in the resolution declaring the necessity therefor, and all taxes for other purposes shall be levied on all property in the territory comprising the district. All such taxes shall be collected at the same time and in the same manner and form as county taxes are collected, and when collected shall be paid to the district for which such taxes were levied and collected. If such taxes are levied for the payment of a bonded debt for the benefit of certain property within the district, as so stated in the resolution of the board of directors aforesaid, such taxes shall be a lien upon each lot or parcel of said property to the extent of the levy of said taxes upon said lot or parcel; and all taxes for other purposes shall be a lien upon each lot or parcel of land within the entire area comprising the district, to the extent of the levy of said taxes upon said lot or parcel; and said taxes, whether for the payment of a bonded indebtedness or for other purposes, shall be of the same force and effect as other liens for taxes, and their collection shall be enforced by the same means as provided for in the enforcement of liens for state and county taxes. Such taxes if not paid shall become delinquent at the same time as do county taxes.

History: En. Sec. 28, Ch. 242, L. 1957; amd. Sec. 1, Ch. 45, L. 1959.

Amendment

The 1959 amendment substituted the first part of the third sentence for one which formerly read: "Such taxes, if for the payment of a bonded debt, shall be a lien on all the property benefited thereby, as so stated in the resolution of

the board of directors aforesaid, and all taxes for other purposes shall be a lien on all the property in the territory comprising the district"; and added the last sentence.

Repealing Clause

Section 2 of Ch. 45, Laws 1959 repealed all acts and parts of acts in conflict therewith.

16-4529. Initiative. Ordinances may be passed by the electors of any county water district organized under the provisions of this act in accordance with the methods provided by the general laws of the state for direct legislation applicable to cities and towns.

History: En. Sec. 29, Ch. 242, L. 1957.

16-4530. Referendum. Ordinances may be disapproved and thereby vetoed by the electors of any such county water district by proceeding

in accordance with the methods provided by the general laws of the state for protesting against legislation by cities and towns.

History: En. Sec. 30, Ch. 242, L. 1957.

16-4531. Adding to district. Any portion of a county or any municipality, or both, may be added to any county water district organized under the provisions of this act, at any time, upon petition presented in the manner therein provided for the organization of such water district, which petition may be granted by ordinance of the board of directors of such water district. Such ordinance shall be submitted for adoption or rejection to the vote of the electors in such water district and in the proposed addition, at a general or special election held as herein provided, within seventy (70) days after the adoption of such ordinance. If such ordinance is approved, the president and secretary of the board of directors shall certify that fact to the secretary of state and to the county recorder of the county in which such water district is located. Upon the receipt of such last mentioned certificate the secretary of state shall, within ten (10) days, issue his certificate, reciting the passage of said ordinance and the addition of said territory to said district. A copy of such certificate shall be transmitted to and filed with the county clerk of the county in which such county water district is situated. From and after the date of such certificate the territory named therein shall be deemed added to and form a part of said county water district, with all the rights, privileges and powers set forth in this act and necessarily incident thereto.

History: En. Sec. 31, Ch. 242, L. 1957.

16-4532. Definitions. Nothing in this act shall be so construed as repealing or in any wise modifying the provisions of any other act relating to water or the supply of water to, or the acquisition thereof by counties or municipalities within this state. The term "municipality," as used in this act, shall include a consolidated city and county, city or town, and shall be understood and so construed as to include, and is hereby declared to include, all corporations heretofore organized and now existing and those hereafter organized for municipal purposes within such water districts. The term "county" shall be understood and construed to include "city and county." In municipalities in which there is no mayor the duty imposed upon said officer by the provisions of this act shall be performed by the president of the board of trustees or other chief executive of the municipality. The word "district" shall apply, unless otherwise expressed or used, to a water district formed under the provisions of this act, and the word "board" and the words "boards of directors" shall apply to the board of directors of such district.

History: En. Sec. 32, Ch. 242, L. 1957.

16-4533. Exclusion of territory—petition—contents—duties of secretary—hearing—order excluding lands. Any territory, included within any county water district formed under the provisions of this act, and not benefited in any manner by such district, or its continued inclusion therein, may be excluded therefrom by order of the board of directors of such dis-

trict upon the verified petition of the owner or owners in fee of lands whose assessed value, with improvements, is in excess of one-half of the assessed value of all the lands, with improvements, held in private ownership in such territory. Said petition shall describe the territory sought to be excluded and shall set forth that such territory is not benefited in any manner by said county water district or its continued inclusion therein, and shall pray that such territory may be excluded and taken from said district. Such petition shall be filed with the secretary of the water district and shall be accompanied by a deposit with such secretary of the sum of one hundred dollars (\$100.00), to meet the expenses of advertising and other costs incident to the proceedings for the exclusion of such territory, including the cost of recording a certified copy of the order hereinafter provided for, any unconsumed balance to be returned to the petitioner. Upon the filing of such petition with the secretary of the water district he shall call a meeting of the board of directors of the district at a time not less than twenty-five (25) days nor more than fifty (50) days after the filing of the petition and cause a notice of the filing of such petition to be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper within said district, if there be one, and if not, in some newspaper of general circulation published in the county in which the district is situated. Such notice shall also state the date of the filing of such petition and that the same will come on for hearing before the board of directors of the district and shall state the time of the hearing and the place thereof, which shall be the regular meeting place of the board of directors of the district; provided, that the board may adjourn the hearing to a more convenient meeting place within the district. Any landowner or taxpayer within the district shall have the right to appear at said hearing, either in behalf of or in opposition to the granting of said petition. Said petition shall come on for hearing before the board of directors of the district at the time and place specified in the notice of hearing. If upon such hearing the board of directors determines that it is for the best interests of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district, or if it appears that such lands, or some portion thereof, will not be benefited by their continued inclusion in the district, then the board of directors shall make an order that such lands, or such portion thereof, be excluded from the district, such order to describe specifically the lands so excluded. From the time of the making of such order the lands so excluded shall be deemed to be no longer included in the district, but such order of exclusion shall not be taken to invalidate in any manner any taxes or assessments theretofore levied or assessed against the lands so excluded. A copy of such order of exclusion, certified to by the secretary of the district, shall be recorded in the office of the county recorder of the county in which the district is situated and the record of such certified copy shall be deemed prima facie evidence of the exclusion from the district of the lands purporting to be excluded thereby.

History: En. Sec. 33, Ch. 242, L. 1957.

16-4534. Directors may institute proceedings for exclusion—hearing—referendum. The board of directors of any county water district formed

under the provisions of this act may itself initiate the proceedings for the exclusion from the district of any land or lands which it may not be for the best interests of the district to be included, or which may not be benefited in any manner by their continued inclusion therein. Such proceedings shall be initiated by the board of directors by the passage of a resolution requiring all persons interested to appear and show cause before the board of directors, at a time and place specified, why such lands, describing them, should not be excluded from the district and fixing a time and place for such hearing and directing the secretary of the district to give notice of the passage of such resolution and of such hearing. Upon the passage of such resolution the secretary of the district shall give notice thereof and of the time and place of such hearing in the manner hereinbefore prescribed for notice of hearing upon petition by a landowner or landowners, and thereafter all proceedings shall be had in the manner and with the effect herein provided for proceedings upon a petition by a landowner or landowners. The time of hearing fixed by the board of directors by its resolution hereinbefore mentioned shall be not less than twenty-five (25) days nor more than fifty (50) days after the passage of such resolution and the place of hearing so fixed shall be a convenient place within the district; provided that the final action of the board of directors under this section shall be subject to the referendum by the electors of the water district according to section 30 [16-4530] of this act.

History: En. Sec. 34, Ch. 242, L. 1957.

deemed to affect any other section or part hereof."

Separability Clause

Section 35 of Ch. 242, Laws 1957 read "Every section of this act and every part of each section is hereby declared to be independent of each other, and the holding of any section or part hereof to be void or ineffective for any cause shall not be

Effective Date

Section 36 of Ch. 242, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 13, 1957.

CHAPTER 46—DOG LICENSING

- Section 16-4601. Collar and license tag required.
 16-4602. County commissioners may issue licenses—license year—application for license—application for kennel license.
 16-4603. Fees—kennel license tags—use.
 16-4604. Municipal license tag as compliance with act.
 16-4605. Seizure and impounding of dogs running at large without tag.
 16-4606. County commissioners to provide for impounding and disposition of dogs.
 16-4607. County pound master—appointment—authority for contracts with humane societies or municipal corporations.
 16-4608. Impounded dogs—disposition—dogs suspected of rabies or known to have bitten human or animal.
 16-4609. Fee for impounding and keeping dog.
 16-4610. Fees and charges as charge against county—payment by owner claiming dog.
 16-4611. Failure of owner to pay pound fee constitutes abandonment.
 16-4612. Disposition of license fees and fines.
 16-4613. Violation constitutes misdemeanor.
 16-4614. Liability of owner of dog for damages to livestock or poultry.
 16-4615. "Owner" defined.

16-4601. Collar and license tag required. It shall be unlawful where this act applies for any person to own, harbor or keep any dog over the

age of five (5) months, or to permit such a dog owned, harbored or controlled by him to run at large, unless the dog has attached to its neck a substantial collar on which is fastened a license tag issued by the authority of a county or a municipal corporation for the purpose of identifying the dog and designating the owner; provided, however, that it shall be lawful to remove such collar and license tag when such dog is under the immediate control of its owner or his agent.

History: En. Sec. 1, Ch. 280, L. 1959.

Title of Act

An act to protect livestock from injury by dogs; providing that it may be unlawful to keep a dog over the age of five (5) months without an identifying license tag; providing for the issuance of dog license tags and kennel licenses by county treasurers and the fees therefor; providing for the issuance of dog license tags by municipal corporations under the provisions of this act; providing for the impounding of unlicensed dogs running at large by law enforcement officers and a fee therefor; providing that county commissioners may provide for the impounding and disposition of dogs running at large contrary to the provisions of this act, and authorizing them to appoint a county pound master to enforce this act or to enter into contracts with others to perform such duties; providing that impounded dogs shall not be disposed of without notice to the owner, if known, or before seventy-two (72) hours have elapsed after impounding nor, in the case of dogs suspected of rabies, before release by the

county health officer; providing for the fixing of pound fees and charges by the board of county commissioners and the payment thereof from the county treasury or by the owner of such impounded dog; providing that failure of the owner of a dog to pay pound fees and charges after notice of impounding constitutes abandonment of the dog; providing that fees and fines collected under this act shall be paid into the county treasury for the enforcement of this act; providing that violation of this act shall constitute a misdemeanor; providing that the owner of livestock or poultry killed or injured by a dog or dogs may recover damages from the owner or owners thereof and that lack of knowledge of the dog's disposition or whereabouts shall constitute no defense to said action; defining the word "owner" in relation to dogs; providing that if any part of this act is adjudged invalid, inoperative or unconstitutional, such decision shall not affect, impair or invalidate the remaining portions of this act; and providing for the repeal of all acts and parts of acts in conflict herewith.

16-4602. County commissioners may issue licenses—license year—application for license—application for kennel license. The board of county commissioners of any county in the state of Montana may provide for the annual issuance of serially numbered dog license tags, stamped with the name of the county and the year of issue, which shall be issued by the county treasurer to owners of dogs who make application and pay the dog license fee, or to owners of kennels who make application and pay the kennel license fee. The license year shall commence on the first day of July and end on the thirtieth day of the following June. Each application, except by a kennel owner, shall state the age, sex, color, and breed of the dog for which the license is desired and the address of the owner. An application for a kennel license shall state the name and address of the owner of the kennel. The term "kennel" shall mean any establishment wherein or whereon five (5) or more dogs are kept for the purpose of boarding, breeding, sale, sporting or commercial purposes.

History: En. Sec. 2, Ch. 280, L. 1959.

16-4603. Fees—kennel license tags—use. The county treasurer shall endorse upon the application for a dog license tax the number of the license tag issued. The fee for the issuance of a dog license tag shall be one dollar (\$1.00), but the board of county commissioners may increase

the fee to not more than five dollars (\$5.00) if deemed advisable for proper administration of this act. The fee for issuance of a kennel license shall be five dollars (\$5.00), but the board of county commissioners may increase the fee to not more than twenty dollars (\$20.00) if deemed advisable for proper administration of this act. Upon issuance of a kennel license, the county treasurer shall deliver to the applicant ten (10) serially numbered license tags stamped with the name of the county and the year of issue. Such tags shall be made in a form so that they are readily distinguishable from individual license tags for that year. Such tags may be transferred from one dog to another within the kennel. The kennel owner shall retain such license tags when he sells or otherwise disposes of a dog. All applications for dog license tags and kennel licenses, endorsed with the numbers of the license tags issued thereunder, shall be kept on file in the office of the county treasurer open to public inspection.

History: En. Sec. 3, Ch. 280, L. 1959.

16-4604. Municipal license tag as compliance with act. Any dog license tag issued annually by any municipal corporation pursuant to an ordinance which substantially complies with this act and which provides for the wearing of the license tag upon the collar of the dog and the keeping of a record which will establish the identity of the person who owns, keeps or harbors the dog constitutes compliance with the licensing provisions of this act.

History: En. Sec. 4, Ch. 280, L. 1959.

16-4605. Seizure and impounding of dogs running at large without tag. Any dog found running at large without a valid current dog license tag issued by the authority of a county or municipal corporation pursuant to the provisions of this act, may be seized and impounded by any sheriff, deputy sheriff, policeman, game warden, county pound master or other law enforcement officer.

History: En. Sec. 5, Ch. 280, L. 1959.

16-4606. County commissioners to provide for impounding and disposition of dogs. The board of county commissioners of each county where this act applies shall provide for the taking up and impounding of all dogs found running at large contrary to the provisions of this act and for the killing in some humane manner or other disposition of any dog impounded.

History: En. Sec. 6, Ch. 280, L. 1959.

16-4607. County pound master—appointment—authority for contracts with humane societies or municipal corporations. The board of county commissioners may appoint a county pound master and fix the compensation for his services whose duties shall be to take up, impound and kill dogs under this act, and otherwise enforce the provisions of this act, or the board of county commissioners may enter into a contract with any humane society or other person, organization or association which will undertake to carry out the provisions of this act regarding the taking up, impounding and killing of dogs, and which shall give a proper bond in

whatever amount may be fixed by the board of county commissioners for the faithful performance of the contract. The board of county commissioners may also enter into contracts with municipal corporations for the use by the county or by the municipal corporation of the impounding facilities of the other.

History: En. Sec. 7, Ch. 280, L. 1959.

16-4608. Impounded dogs—disposition—dogs suspected of rabies or known to have bitten human or animal. No dog impounded under the provisions of this act shall be killed or otherwise disposed of without notice to the owner, if he is known, and no dog so impounded shall be killed before seventy-two (72) hours have elapsed from the time of the taking up of the dog; provided, however, that any impounded dog suspected of having rabies or known to have bitten any human or animal, shall not be killed or otherwise disposed of until released by the county health officer or his agent.

History: En. Sec. 8, Ch. 280, L. 1959.

16-4609. Fee for impounding and keeping dog. The board of county commissioners shall fix the fee for impounding any dog and the amount to be paid for keeping the dog.

History: En. Sec. 9, Ch. 280, L. 1959.

16-4610. Fees and charges as charge against county—payment by owner claiming dog. The fees and pound charges for taking up and impounding and for keeping the dogs shall be a charge against the county treasury, to be paid as other claims against the county are paid; provided, however, that in any case where a dog so impounded is claimed by the owner, the fee for impounding and keeping the dog as fixed by the board of county commissioners, shall be paid by the owner to the person, organization or association having custody of the dog, to be retained by him or them, and no charge for fees pertaining to the dog shall be paid by the county.

History: En. Sec. 10, Ch. 280, L. 1959.

16-4611. Failure of owner to pay pound fee constitutes abandonment. The refusal or failure of the owner of any such dog to pay the pound fee and charges after due notification shall be held to be an abandonment of the dog by the owner.

History: En. Sec. 11, Ch. 280, L. 1959.

16-4612. Disposition of license fees and fines. All fees for the issuance of dog license tags, kennel licenses, and all fines collected under the provisions of this act shall be paid into the county treasury and shall be used to pay fees, salaries, costs, expenses, or any or all of them for the enforcement of this act.

History: En. Sec. 12, Ch. 280, L. 1959.

16-4613. Violation constitutes misdemeanor. Violation of any provision of this act shall constitute a misdemeanor.

History: En. Sec. 13, Ch. 280, L. 1959.

16-4614. Liability of owner of dog for damages to livestock or poultry.

The owner of livestock or poultry injured or killed by any dog may recover as liquidated damages from the owner of the dog, the actual value of the animals killed or the value of the damages sustained by reason of the injuries as the case may be. If two or more dogs kept by two or more owners or keepers injure or kill any livestock or poultry at the same time, the owners or keepers of the dogs are jointly and severally liable for such damages. It shall be no defense to said action that the owner or keeper of the dog had no knowledge of the dog's whereabouts at or prior to the time when the dog injured or killed livestock or poultry or that the owner or keeper of the dog had no knowledge of the dog's disposition or inclination to worry, kill or injure livestock or poultry.

History: En. Sec. 14, Ch. 280, L. 1959.

16-4615. "Owner" defined. The word "owner" when used in this act in relation to property in or possession of, dogs, shall include every person who owns, harbors or keeps a dog.

History: En. Sec. 15, Ch. 280, L. 1959.

Repealing Clause

Section 17 of Ch. 280, Laws 1959 repealed all acts or parts of acts in conflict therewith.

Separability Clause

Section 16 of Ch. 280, Laws 1959 read "If any part of this act shall be adjudged invalid, inoperative or unconstitutional, such decision shall not affect, impair or invalidate any other part of this act."

CHAPTER 47—ZONING DISTRICTS

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| Section | 16-4701. Purpose of act—powers of county commissioners. |
| | 16-4702. Recommendations by city-county planning board. |
| | 16-4703. Establishment of districts—regulations for land use—scope—uniformity. |
| | 16-4704. Purposes of regulations—factors considered. |
| | 16-4705. Procedure for adoption of regulations and boundaries. |
| | 16-4706. Board of adjustment—exceptions to regulations—procedure—appeals. |
| | 16-4707. Penalty for violations—enforcement proceedings. |
| | 16-4708. Enforcement officers—location and conformance permits. |
| | 16-4709. Continuation of existing uses. |
| | 16-4710. Natural resources protected. |

16-4701. Purpose of act—powers of county commissioners. For the purpose of promoting the health, safety, morals and general welfare of the people in cities and towns and counties whose governing bodies have adopted a comprehensive development plan for jurisdictional areas pursuant to Title 11, Chapter 38, R.C.M. 1947, the board of county commissioners in such counties are authorized to adopt zoning regulations for all or parts of such jurisdictional areas in accordance with the provisions of this act.

History: En. Sec. 1, Ch. 246, L. 1963.

Title of Act

An act to enable boards of county commissioners to designate zoning districts in certain areas lying outside the corporate limits of cities and towns, and to adopt zoning regulations for these zoning districts, and to create zoning commissions and zoning boards of adjustment for

these districts, and repealing sections 11-2710, 11-3852, and 11-3854, R.C.M. 1947, and all acts and parts of acts in conflict herewith.

Preamble

Section 1 of Ch. 246, Laws 1963, was preceded by a preamble reading as follows:

WHEREAS, continuing growth and economic development of many cities and towns of this state create urbanized use of lands adjoining and surrounding these cities and towns but beyond their incorporated limits, and

WHEREAS, orderly patterns of use for such lands preserve and increase their value as residential, industrial, agricultural, commercial, recreational or other lands as may be appropriate to their situation, and

WHEREAS, establishment of reasonable patterns of land use and development is more appropriately determined by local consultation and decision than by

enactment of the state legislative assembly, and

WHEREAS, the boards of county commissioners are constituted agencies for local administrative decision within policy limits which are determined by the legislative assembly, and

WHEREAS, it is the intention of the legislative assembly that the boards of county commissioners shall exercise the police power of the state for the purpose of establishing and administering zoning districts for certain unincorporated suburban lands of the state within the provisions and limitations of this act.

16-4702. Recommendations by city-county planning board. The board of county commissioners shall require the city-county planning board to act as a zoning commission to recommend boundaries and appropriate regulations for the various zoning districts. The city-county planning board shall make a written report of its recommendations to the board of county commissioners, but such recommendations shall be advisory only.

History: En. Sec. 2, Ch. 246, L. 1963.

16-4703. Establishment of districts—regulations for land use—scope—uniformity. (1) Within the unincorporated portions of a jurisdictional area which has been established under provisions of section 11-3825, R.C.M. 1947, and which portions are contiguous to a city, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or parts of the jurisdictional area.

(2) Within some such zoning districts it shall be lawful and within others it shall be unlawful to erect, construct, alter or maintain certain buildings, or to carry on certain trades, industries or callings.

(3) Within each district the height and bulk of future buildings and the area of the yards, courts and other open spaces and the future uses of the land or buildings shall be limited and future building setback lines shall be established.

(4) All such regulations shall be uniform for each class or kind of buildings throughout a district, but the regulations in one (1) district may differ from those in other districts.

History: En. Sec. 3, Ch. 246, L. 1963.

16-4704. Purposes of regulations—factors considered. The zoning regulations shall be made in accordance with a comprehensive development plan, and shall be designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such zoning regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to

conserving the value of buildings and encouraging the most appropriate use of land throughout such jurisdictional area, and the zoning regulations shall, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area.

History: En. Sec. 4, Ch. 246, L. 1963.

16-4705. Procedure for adoption of regulations and boundaries. The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district shall be published once a week for two (2) weeks in a newspaper of general circulation within the county. The notice shall state:

- (a) the boundaries of the proposed district
- (b) the general character of the proposed zoning regulations
- (c) the time and place of the public hearing
- (d) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder.

(2) At the public hearing the board shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing the board shall review the proposals of the planning board and shall make such revisions or amendments as it may deem proper.

(4) The board may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board shall publish notice of passage of the resolution of intention once a week for two (2) weeks in a newspaper of general circulation within the county. The notice shall state:

- (a) the boundaries of the proposed district
- (b) the general character of the proposed zoning regulations
- (c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder

(d) that for thirty (30) days after first publication of this notice the board will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last completed assessment roll of the county.

(6) Within thirty (30) days after the expiration of the protest period the board may in its discretion adopt the resolution creating the zoning district and/or establishing the zoning regulations for the district; but if forty (40) percent of the freeholders within such district whose names appear on the last completed assessment roll shall have protested the establishment of the district or adoption of the regulations, the board shall not adopt the resolution and no further zoning resolution shall be proposed for the district for a period of one (1) year.

History: En. Sec. 5, Ch. 246, L. 1963.

16-4706. Board of adjustment—exceptions to regulations—procedure—appeals. The board of county commissioners shall provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this act shall provide that the board of adjustment may, in appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions to the terms of the zoning resolution in harmony with its general purposes and intent and in accordance with the general or specific rules of this act.

(1) The board of adjustment shall consist of five (5) members, each to be appointed for a term of two (2) years, and removable for cause by the board of county commissioners upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The board of county commissioners may designate the same persons to act as members of the board of adjustment for unincorporated portions of the jurisdictional area as may be appointed by the municipality within the jurisdictional area under provisions of section 11-2707, R.C.M. 1947.

(2) The board of adjustment shall adopt rules in accordance with the provisions of any resolution adopted pursuant to this act. Meetings of the board of adjustment shall be held at the call of the chairman and at such times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

(3) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the county affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed was taken.

(4) An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the

parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by his attorney.

(5) The board of adjustment shall have the following powers:

To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this act or of any resolution adopted pursuant thereto.

To hear and decide special exceptions to the terms of the zoning resolution upon which said board is required to pass under such resolution.

To authorize upon appeal in specific cases such variance from the terms of the resolution as will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the resolution will result in unnecessary hardship, and so that the spirit of the resolution shall be observed and substantial justice done.

(6) In exercising the above mentioned powers, the board of adjustment may, in conformity with the provisions of this act, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

(7) The concurring vote of three (3) members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such resolution, or to effect any variation in such resolution.

(8) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the county, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the board.

(9) Upon presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, upon application, on notice to the board and on due cause shown, grant a restraining order.

(10) The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(11) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, the court may take

evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

(12) Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

History: En. Sec. 6, Ch. 246, L. 1963.

16-4707. Penalty for violations—enforcement proceedings. A violation of this act or any resolution adopted pursuant thereto is hereby declared to be a misdemeanor and shall be punishable by a fine (of) not exceeding five hundred dollars (\$500) or imprisonment in the county jail not exceeding six (6) months, or both.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this act, or of any resolution made under authority conferred hereby, the proper authorities of the county, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of such building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises.

History: En. Sec. 7, Ch. 246, L. 1963.

16-4708. Enforcement officers—location and conformance permits. The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions, and may provide for the issuance of location or conformance permits and may collect a fee for each such permit, and the proceeds of such fees shall be deposited in the general fund of the county.

History: En. Sec. 8, Ch. 246, L. 1963.

16-4709. Continuation of existing uses. Any lawful use which is made of land or buildings at the time any zoning resolution is adopted by the board of county commissioners may be continued, although such use does not conform to the provisions of such resolution.

History: En. Sec. 9, Ch. 246, L. 1963.

16-4710. Natural resources protected. No resolution, rule or regulation adopted pursuant to the provisions of this act shall prevent the complete use, development or recovery of any mineral, forest, or agricultural resources by the owner thereof.

History: En. Sec. 10, Ch. 246, L. 1963.

Separability Clause

Section 11 of Ch. 246, Laws 1963 read

"The provisions of this act shall be severable and, if any of its sections, provisions, exceptions, clauses or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Repealing Clause

Section 12 of Ch. 246, Laws 1963 read "Sections 11-2710, 11-3852, and 11-3854, R.C.M. 1947, and all acts and parts of acts in conflict herewith are hereby repealed."

TITLE 17—DAMAGES AND RELIEF

Chapter 4. Damages for wrongs, 17-410.

12. Alienation of affections—breach of promise to marry, 17-1201 to 17-1206.

CHAPTER 1—RELIEF IN GENERAL

17-102. (8658) Relief in case of forfeiture.

Essential Allegations

In an action involving rights of parties to written contract for sale of property where defendants sought to rescind contract, if the defendants could make out a case under this section, they should be permitted to do so and ought not to forfeit all of the money which they paid. To prevail on this ground they were required to allege and prove a case following within the terms of the statute. *Joy v. Little*, 134 M 82, 328 P 2d 636, 639, 641.

Right to Relief

In action to prohibit defendant from cancelling an agreement for sale of lands even though the deposit in court might be legally insufficient as a tender to defendant, plaintiff might be relieved from forfeiture upon a showing of facts sufficient to appeal to the conscience of a court of equity. *Blackfeet Indian Tribe of the Blackfeet Indian Reservation v. Klies Livestock Co.*, 160 F Supp 131, 133, 141.

When Relief is Improper

Conditional buyers were not entitled to relief from forfeiture of conditional sales contract because of their inability to make payments required by contract due to a wide-spread strike. *Kovacich v. Metals Bank & Trust Co.*, 139 M 449, 365 P 2d 639, 640.

When Relief is Proper

To come within the provisions of this section a party must set forth facts of a forfeiture which will appeal to the conscience of a court of equity. *Kovacich v. Metals Bank & Trust Co.*, 139 M 449, 365 P 2d 639, 640.

Willful Breach

This section explicitly points out that if the breach is willful there will be no relief from forfeiture and no common-law principle can override this exacting statutory provision. *Joy v. Little*, 138 M 110, 354 P 2d 1035, 1041.

CHAPTER 2—COMPENSATORY RELIEF—DAMAGES—INTEREST—EXEMPLARY DAMAGES

17-201. (8659) Person suffering detriment may recover damages.

Operation and Effect

In an action for damages to an automobile, it was not a condition precedent to recovery that the plaintiff should have first incurred an indebtedness or that he should actually have paid the sum claimed

for the repairs. *Hoenstine v. Rose*, 131 M 557, 312 P 2d 514, 517.

References

Hursh v. Mon-O-Co. Oil Corp., 139 M 302, 363 P 2d 485, 487.

17-202. (8660) Detriment defined.

References

Cited or applied in *Hoenstine v. Rose*, 131 M 557, 312 P 2d 514, 517; *Hursh v.*

Mon-O-Co. Oil Corp., 139 M 302, 363 P 2d 485, 487.

17-208. (8666) Exemplary damages—in what cases allowed.

Breach of Contract

Plaintiff was not entitled to exemplary damages in action for allegedly fraudulent representations by defendant's insurance adjuster inducing execution of a contract of release by the plaintiff. *Westfall v. Motors Ins. Corp.*, — M —, 374 P 2d 96, 99.

Eviction of Tenant

Where a landlord, in doing an act which constructively evicts the tenant, is motivated by a desire to vex, injure or annoy the tenant, the act is done maliciously and a jury may award punitive damages. *Cruse v. Clawson*, 137 M 439, 352 P 2d 989, 995.

CHAPTER 3—MEASURE OF DAMAGES

17-301. (8667) Measure of damages for breach of contract.**Detriment Proximately Caused**

In action by plaintiffs, who purchased residence from contractor before it was completed, to recover for defective material and workmanship, instruction, although broad, was not prejudicial, where it read: "You are instructed that if you find from a preponderance of the evidence in this action that plaintiffs are entitled to damages, then in arriving at the measure of damages, it is the amount which will compensate the plaintiff for all detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom, or which has resulted therefrom." Mitchell

v. Carlson, 132 M 1, 313 P 2d 717, 719, 720.

Hail Insurance

In an action by the insured against his insurer to recover loss to the insured trailer caused by a hail storm where the insurer failed to prove the measure of damages according to its theory of the case, the district court was not in error in entering judgment for the insured on the basis of estimate of cost of repairing hail damage. Eby v. Foremost Ins. Co., — M —, 374 P 2d 857, 861.

References

Cited or applied in Orford v. Topp, 136 M 227, 346 P 2d 566, 568.

17-306. (8672) Breach of agreement to convey real property.**Cost of Altering Other Property**

Where, under instructions based on this section and section 17-602, the jury was told that the plaintiff could recover the difference between the price agreed to be paid and the price plaintiff would be required to pay for similar property, the jury could not properly award an amount based on the projected costs of making some other property similar. Orford v. Topp, 136 M 227, 346 P 2d 566, 569.

Price of Other Property

This section and section 17-602 must be applied together in an appropriate case and, thus, where bad faith is shown, the aggrieved buyer's damages are set at the difference between the price he agreed to pay and the price he is required to pay on

the market for equivalent property. Orford v. Topp, 136 M 227, 346 P 2d 566, 568.

Property of Peculiar Value

This section and section 17-603 must be construed together in determining damages in a case where the property of which the buyer is deprived has a peculiar value to him. Orford v. Topp, 136 M 227, 346 P 2d 566, 569.

Where there was no evidence to show any peculiar value to the plaintiffs in the property of which they were deprived, a verdict in excess of the difference between the price which the purchasers agreed to pay and the price for which the property was sold by the vendor was not supported. Orford v. Topp, 136 M 227, 346 P 2d 566, 569.

17-308 to 17-314. (8674 to 8680) Repealed.**Repeal**

These sections (Secs. 4308 to 4314 Civ. C. 1895), relating to breaches of contracts

to buy or sell personal property, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

17-319. (8685) Repealed.**Repeal**

This section (Sec. 4319, Civ. C. 1895), relating to breach of promise of marriage,

was repealed by Sec. 7, Ch. 200, Laws 1963.

CHAPTER 4—DAMAGES FOR WRONGS

Section 17-410. Emergency care rendered at scene of accidents.

17-401. (8686) Breach of obligation other than contract.**Loss of Profits**

A person may recover for loss of profits where it is shown that such loss is the natural and direct result of the act of the

defendant complained of and that such amount is certain and not speculative. Cruse v. Clawson, 137 M 439, 352 P 2d 989, 994.

Personal Injury Actions

There is no measuring stick by which to determine the amount of damages to be awarded in personal injury actions. Each case must depend upon its own particu-

lar facts. *Chavez v. United States*, 192 F Supp 263, 270.

References

Cited or applied in *Hoenstine v. Rose*, 131 M 557, 312 P 2d 514, 517.

17-408. (8693) Injuries to animals.

Exemplary Damages

In an action for damages resulting from collision of plaintiffs' logging truck with defendant's cattle, in which defendant cross-complained for loss of cattle and exemplary damages, an award of \$2,500 exemplary damages for loss of twenty head of cattle was not improper. *Franck v. Hudson*, — M —, 373 P 2d 951, 954.

Under this section it is within the province of the jury to fix the amount of exemplary damages and the supreme court will not interfere with such a determination unless it appears to have been influenced by passion, prejudice, or some improper motive. *Franck v. Hudson*, — M —, 373 P 2d 951, 954.

17-410. Emergency care rendered at scene of accidents. Any person licensed as a physician and surgeon under the laws of the state of Montana, or any other person, who in good faith renders emergency care or assistance, without compensation, at the scene of an emergency or accident, shall not be liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by wilful or wanton acts or omissions by such person in rendering such emergency care.

History: En. Sec. 1, Ch. 93, L. 1963.

Title of Act

An act to provide that licensed physicians and surgeons, and other persons, shall not be liable for any civil damages for the rendition of emergency care or assistance done without compensation at the scene of emergencies or accidents, for

any acts or omissions by such persons rendering such emergency care.

Effective Date

Section 2 of Ch. 93, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 28, 1963.

CHAPTER 5—PENAL DAMAGES

17-503. (8696) Injuries to trees, etc.

References

Cited in *Thompson v. Mattuschek*, 134 M 500, 333 P 2d 1022, 1027.

CHAPTER 6—VALUE—HOW ESTIMATED—LIMITATIONS OF DAMAGES

17-601, 17-602. (8699, 8700) Repealed.

Repeal

These sections (Secs. 4360, 4361, Civ. C. 1895), relating to the measure of dam-

ages in actions involving personal property, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

17-603. (8701) Property of peculiar value.

Damages to Purchaser

This section and section 17-306 must be construed together in determining damages in a case where the property of which the buyer is deprived has a peculiar value to him. *Orford v. Topp*, 136 M 227, 346 P 2d 566, 569.

Deprivation of Property

Similar statutes have been held applicable to cases involving damage to property in which an individual has had an interest or possession, or has made special use thereof over a period of time, and in which the property has acquired a value

which was peculiar to that individual alone, and where a measure of damages based on market value would be manifestly inadequate. *Orford v. Topp*, 136 M 227, 346 P 2d 566, 569.

Insufficient Evidence of Peculiar Value

Where there was no evidence to show

any peculiar value to the plaintiffs in the property of which they were deprived, a verdict in excess of the difference between the price which the purchasers agreed to pay and the price for which the property was sold by the vendor was not supported. *Orford v. Topp*, 136 M 227, 346 P 2d 566, 569.

CHAPTER 8—SPECIFIC RELIEF—PERFORMANCE OF OBLIGATIONS

17-803. (8716) No remedy unless mutual.

Operation and Effect

Vendee of a contract for the sale of mining property cannot compel specific performance by the vendor, where the contract called for the vendee to deposit a specific amount of cash in the bank, and the vendee had not done so. *Sidwell v.*

The New Mine Sapphire Syndicate, 130 M 189, 297 P 2d 299, 303. (Dissenting opinion, 130 M 189, 297 P 2d 299, 303.)

References

Cited in *Steen v. Rustad*, 132 M 96, 313 P 2d 1014, 1018.

17-807. (8720) What cannot be specifically enforced.

Certainty and Completeness of Contract

Absolute certainty and completeness in every detail is not a prerequisite of specific performance, only reasonable certainty and completeness being required. *Steen v. Rustad*, 132 M 96, 313 P 2d 1014, 1020.

A contract to be specifically enforced must be complete and certain in all essential matters included within its scope. Nothing must be left to conjecture or surmise, or be so vague as to make it impossible for the court to glean the intent of the parties from the instrument, or the acts sought to be enforced. *Steen v. Rustad*, 132 M 96, 313 P 2d 1014, 1020.

Those matters which are merely subsidiary, collateral, or which go to the performance of the contract are not essential, and therefore need not be expressed in the informal agreement. *Steen v. Rustad*, 132 M 96, 313 P 2d 1014, 1020.

Lease with Option to Buy

Plaintiff was entitled to specific performance of agreement by which defendants gave plaintiff an exclusive option to purchase land under the existing lease for \$8,500; plaintiff's method of exercising the option was to pay defendants \$1,500 before November 1, 1951; that sum would constitute the down payment on the property; payment of the balance was provided for by the plaintiff delivering to the defendants two-thirds of the crop raised each year, such crop share to cover the payment due and owing on the contract for that year; and it was further provided that the plaintiff was to summer fallow 45 acres of land during the year 1951. *Steen v. Rustad*, 132 M 96, 313 P 2d 1014, 1020, 1021.

17-809. (8722) What parties cannot have specific performance, etc.

Operation and Effect

Vendee of a contract for the sale of mining property cannot compel specific performance by the vendor, where the contract called for the vendee to deposit a specific amount of cash in the bank and he had not done so. An allegation in the complaint that the vendee had deposited a substantial sum in the bank was not suf-

ficient since the contract called for a specific amount. *Sidwell v. The New Mine Sapphire Syndicate*, 130 M 189, 297 P 2d 299, 303. (Dissenting opinion, 130 M 189, 297 P 2d 299, 303.)

References

Cited in *Continental Oil Co. v. McNair Realty Co.*, 137 M 410, 353 P 2d 100, 110.

CHAPTER 9—SPECIFIC RELIEF—REVISION AND RESCISSION OF CONTRACTS

17-901. (8726) When contract may be revised.

Mistake as to Ownership

Where a deed reserved to the grantors the right to all the minerals, subject only

to the right of grantee to receive half the royalties, the fact that grantors owned the mineral rights on only half the tract con-

veyed did not furnish ground for reformation in the absence of a showing of mutual mistake as to the extent of the grantor's ownership of minerals. *Crawford v. Griffith*, 137 M 140, 351 P 2d 223, 225.

Operation and Effect

Where plaintiff knew that defendant was acting under a mistake with regard to a writing, he was not entitled to revision on the ground of mistake. *Schil-*

linger v. Huber, 133 M 80, 320 P 2d 346, 348.

Where a landowner, induced by the fraud of the person with whom he was contracting, assigned a 1/32 royalty interest instead of an undivided 1/32 interest in and to minerals under and upon his lands, the assignment will be reformed, amended, and corrected by the courts to correctly embody the agreement of the parties. *Carroll v. Funk*, 222 F 2d 508, 511.

17-902. (8727) Presumption as to intent of parties.

Mineral Rights

Grantors seeking reformation of deeds by which they retained portions of landowners' mineral royalties were not entitled to relief where evidence did not

show that deeds contained no provision reserving all mineral and leasing rights in grantors. *Voyta v. Clonts*, 134 M 156, 328 P 2d 655, 661.

17-903. (8728) Principles of revision.

References

Cited in *Voyta v. Clonts*, 134 M 156, 328 P 2d 655, 661.

CHAPTER 10—SPECIFIC RELIEF—CANCELLATION OF INSTRUMENTS

17-1002. (8734) Instrument obviously void.

Effect on Lease

This section fortifies a holding that when a tax claim has been removed as a cloud on title, a lease given by the

tax claimant no longer constitutes a cloud on the title even though the lessee was not a party to the quiet title action. *Purcell v. Gibbs*, 133 M 481, 326 P 2d 679.

CHAPTER 12—ALIENATION OF AFFECTIONS—BREACH OF PROMISE TO MARRY

- Section 17-1201. Causes of action for alienation of affections abolished.
 17-1202. Causes of action for breach of promise abolished—actions for fraud, deceit, and unjust enrichment preserved.
 17-1203. Acts within state not to give rise to cause of action.
 17-1204. Litigation and threat of litigation prohibited.
 17-1205. Settlements and compromises void.
 17-1206. Penalty for violations.

17-1201. Causes of action for alienation of affections abolished. All civil causes of action for alienation of affections of husband or wife are hereby abolished; provided, however, that this section shall not apply to causes of action which have heretofore accrued.

History: En. Sec. 1, Ch. 200, L. 1963.

Title of Act

An act abolishing the actions for breach

of promise of marriage and for alienation of affections and repealing section 17-319, R.C.M., 1947.

17-1202. Causes of action for breach of promise abolished—actions for fraud, deceit, and unjust enrichment preserved. All causes of action for breach of contract to marry are hereby abolished; provided, however, that where a plaintiff has suffered actual damage due to fraud or deceit or a defendant has been unjustly enriched, the plaintiff may maintain an action for fraud or deceit or unjust enrichment and recover therein only the

actual damage proved or for the benefit wrongfully obtained or restitution of property wrongfully withheld, where such action otherwise is maintainable under existing law.

History: En. Sec. 2, Ch. 200, L. 1963.

17-1203. Acts within state not to give rise to cause of action. No act hereafter done within this state shall operate to give rise, either within or without this state, to any of the causes of action abolished by this act. No contract to marry, which shall hereafter be made within this state, shall operate to give rise, either within or without this state, to any cause of action for breach thereof. It is the intention of this act to fix the effect, status, and character of such acts and contracts, and to render them ineffective to support or give rise to any such causes of action, within or without this state.

History: En. Sec. 3, Ch. 200, L. 1963.

17-1204. Litigation and threat of litigation prohibited. It shall hereafter be unlawful for any person, either as litigant or attorney, to file, cause to be filed, threaten to file, or threaten to cause to be filed in any court in this state, any pleading or paper setting forth or seeking to recover upon any cause of action abolished or barred by this act, whether such cause of action arose within or without this state.

History: En. Sec. 4, Ch. 200, L. 1963.

17-1205. Settlements and compromises void. All contracts and instruments of every kind which may hereafter be executed within this state in payment, satisfaction, settlement, or compromise of any claim or cause of action abolished or barred by this act, whether such claim or cause of action arose within or without this state, are hereby declared to be contrary to the public policy of this state and absolutely void. It shall be unlawful to cause, induce or procure any person to execute such a contract or instrument, or cause, induce or procure any person to give, pay, transfer, or deliver any money or thing of value in payment, satisfaction, settlement, or compromise of any such claim or cause of action, or to receive, take, or accept any such money or thing of value in such payment, satisfaction, settlement or compromise. It shall also be unlawful to commence or cause to be commenced, either as litigant or attorney in any court of this state, any proceeding or action seeking to enforce or recover upon any such contract or instrument, knowing it to be such, whether the same shall have been executed within or without this state; provided, however, that this section shall not apply to the payment, satisfaction, settlement, or compromise of any causes of action which are not abolished or barred by this act, or any contracts or instruments heretofore executed, or to the bona fide holder in due course of any negotiable instrument which may be executed hereafter.

History: En. Sec. 5, Ch. 200, L. 1963.

17-1206. Penalty for violations. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction therefor shall be punishable by a fine of not less than one hundred

dollars nor more than one thousand dollars, or imprisonment for a term of not less than one year nor more than five years, in the discretion of the court.

History: En. Sec. 6, Ch. 200, L. 1963.

Repealing Clause

Section 7 of Ch. 200, Laws 1963 read
"Section 17-319, R.C.M. 1947, is repealed."

TITLE 18—DEBTOR AND CREDITOR

Chapter 2. Bulk sales, Repealed—Section 10-102, Chapter 264, Laws of 1963.

CHAPTER 2—BULK SALES

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

18-201 to 18-205. (8607 to 8611) **Repealed.**

Repeal

These sections (Secs. 1 to 5, Ch. 145, L. 1907; Sec. 1, Ch. 128, L. 1915; Secs. 1 to 4, Ch. 106, L. 1931), relating to bulk sales, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

CHAPTER 3—ASSIGNMENTS FOR BENEFIT OF CREDITORS

18-314. (8625) **Verification of inventory—assignee to file, etc.**

Cross-Reference

Application of Montana Rules of Civil Procedure to proceedings on assignment, see Table A, M. R. Civ. P. (sec. 93-2711-7).

TITLE 19—DEFINITIONS AND GENERAL PROVISIONS

- Chapter 1. Definitions and construction of terms—holidays—other general provisions, 19-103.
2. Publication of notice by radio or television, 19-201 to 19-203.

CHAPTER 1—DEFINITIONS AND CONSTRUCTION OF TERMS— HOLIDAYS—OTHER GENERAL PROVISIONS

Section 19-103. Certain words defined.

19-102. (15) Words and phrases, how construed.

References

Cited or applied in *State v. Bain*, 130 M 90, 295 P 2d 241, 244.

19-103. (16) **Certain words defined.** The following words when used in the Revised Codes of Montana of 1947, or in any act amendatory of or supplemental to said codes, shall have the following meanings and interpretations unless otherwise apparent from the context. The present tense includes the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular; the word person includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration, and every mode of oral statement under oath or affirmation is embraced in the term "testify," and every written one in the term "depone"; signature or subscription includes mark when the person cannot write, his name being written near it, and written by a person who writes his own name as a witness. The following words also have the signification attached to them in this section, unless otherwise apparent from the context.

1 to 21. * * * [Same as parent volume.] ✓

22. "Pledge," "mortgage," "conditional sale," "lien," "assignment," and like terms, when used in referring to a security interest in personal property, shall include a corresponding type of security interest under the Uniform Commercial Code—Secured Transactions. [Effective January 1, 1965.]

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R. C. M. 1921; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963. Cal. Pol. C. Sec. 17.

References

Cited or applied in *State ex rel. Burns v. Lacklen*, 129 M 243, 284 P 2d 998, 1001; *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 30; *Cruse v. Clawson*, 137 M 439, 352 P 2d 989, 995.

Amendment

The 1963 amendment added paragraph 22.

19-119 to 19-121. Repealed.

Repeal

These sections (Preamble, Secs. 1, 2, Ch. 75, L. 1947; Secs. 1, 2, Ch. 96, L. 1955;

Sec. 15, Ch. 97, L. 1961), relating to the Montana fine arts' commission and the Charles M. Russell statue, were repealed

by Sec. 14, Ch. 47, Laws 1963. Section 227, Ch. 147, Laws 1963, purported to amend section 19-121; however, under the rule of section 43-515, this amendment was void.

CHAPTER 2—PUBLICATION OF NOTICE BY RADIO OR TELEVISION

Section 19-201. Supplemental publication of notice by radio or television—manner in which made.

19-202. Copy or transcription of broadcast—period for which retained.

19-203. Proof of publication by broadcast.

19-201. Supplemental publication of notice by radio or television—manner in which made. Any official of the state or any of its political subdivisions who is required by law to publish any notice required by law may supplement such publication by a radio or television broadcast of a summary of such notice, or by both of such broadcasts, when, in his judgment, the public interest will be served. The summary of such notice only shall be read with no reference to any person by name then a candidate for political office, and such announcements shall be made only by duly employed personnel of the station from which such broadcast emanates, and announcements by political subdivisions may be made only by stations situated within the county of origin of the legal notice, unless no broadcast station exists in such county, in which case announcements may be made by a station or stations situated in any county other than the county of origin of the legal notice.

History: En. Sec. 1, Ch. 149, L. 1963.

Title of Act

An act providing for supplemental publication by radio broadcast and television

broadcast of a summary of any notice required by law to be published by any official of the state or any of its political subdivisions.

19-202. Copy or transcription of broadcast—period for which retained. Each radio or television station broadcasting any summary of a legal notice shall for a period of six (6) months subsequent to such broadcast retain at its office a copy or transcription of the text of the summary as actually broadcast, which shall be available for public inspection.

History: En. Sec. 2, Ch. 149, L. 1963.

19-203. Proof of publication by broadcast. Proof of publication of a summary of any notice by radio or television broadcast shall be by affidavit of the manager, an assistant manager or a program director of the radio or television station broadcasting the same.

History: En. Sec. 3, Ch. 149, L. 1963.

TITLE 20—DEPOSIT

Chapter 3. Deposit for keeping—storage—unclaimed property, 20-314.

CHAPTER 2—DEPOSIT FOR KEEPING—GRATUITOUS DEPOSIT

20-203. (7650) **Obligations as to use of thing deposited.**

References

Cited or applied in State ex rel. Olsen
v. Sundling, 128 M 596, 281 P 2d 499, 502.

20-209. (7656) **Gratuitous deposit defined.**

References

Cited or applied in State ex rel. Olsen
v. Sundling, 128 M 596, 281 P 2d 499, 502.

CHAPTER 3—DEPOSIT FOR KEEPING—STORAGE—UNCLAIMED PROPERTY

Section 20-314. Uniform Commercial Code—applicability.

20-302. (7661) **Degree of care required of depositary for hire.**

References

Dorall v. Davis, 139 M 69, 360 P 2d 409.

20-314. **Uniform Commercial Code—applicability.** The provisions of this chapter apply only to the extent not otherwise provided for in the Uniform Commercial Code. [Effective January 1, 1965.]

History: En. 20-314 by Sec. 11-116,
Ch. 264, L. 1963.

TITLE 21—DIVORCE

Chapter 1. Dissolution of marriage—divorce, 21-135.1, 21-150.

CHAPTER 1—DISSOLUTION OF MARRIAGE—DIVORCE

Section 21-135.1. Waiting period before hearing on divorce or separate maintenance—reconciliation attempts.

21-150. Divorces granted by other jurisdictions—when not recognized.

21-102. (5735) Effect of divorce.

Cross-Reference

Waiting period for remarriage, sec. 48-151.

21-103. (5736) Causes for divorce.

Agreement on Property Settlement

An agreement as to a property settlement which was not collusive for the purpose of bringing about or facilitating a divorce would be enforced. *Schulz v. Fox*, 136 M 152, 345 P 2d 1045.

Relief Granted

There is no authority in the Montana Civil Code whereby the courts, by statute, could grant a divorce where only separate maintenance is sought. *Reed v. Reed*, 130 M 409, 304 P 2d 590, 592. (Dissenting opinions, 130 M 409, 304 P 2d 590 at 593 and 605.)

Where wife files complaint seeking separate maintenance, and husband files cross-complaint seeking an absolute divorce but court finds against husband, the court cannot, in finding for the wife, decree an absolute divorce in her favor, since the court may not grant any relief beyond that which is sought for by the prevailing party. *Reed v. Reed*, 130 M 409, 304 P 2d 590, 592. (Dissenting opinions, 130 M 409, 304 P 2d 590 at 593 and 605.)

21-106. (5738) Extreme cruelty defined.

Bodily Injury

Husband was entitled to divorce where wife had repeatedly inflicted and threatened bodily injury and personal violence upon him. *Bell v. Bell*, 133 M 572, 328 P 2d 115, 119.

False Accusations

Unfounded accusations of misconduct may constitute cruelty. *Hennity v. Hennity*, 137 M 403, 352 P 2d 689, 692.

Harassing Actions

The maintenance by the wife of the accusations of misconduct, determined to be unproved, and the maintenance of a separate maintenance suit, with no offer of reconciliation, along with the other acts of cruelty proved to have existed, was conduct of such a nature as "to defeat the

proper and legitimate objects of marriage" and "to render the continuance of the married relations between the parties perpetually unreasonable or intolerable" within the meaning of this section, and which were persisted in for one year preceding the commencement of the action. *Hennity v. Hennity*, 137 M 403, 352 P 2d 689, 691, 692.

Provocation

Trial judge must determine whether sufficient provocation exists to provoke wife into violent action against husband. *Bell v. Bell*, 133 M 572, 328 P 2d 115, 120.

References

Cited or applied in *Reed v. Reed*, 130 M 409, 304 P 2d 590, 593 at 595 (dissenting opinion).

21-112. (5744) Desertion—how cured.

Cruel Treatment

Wife seeking separate maintenance was not guilty of desertion where she was forced to leave defendant because of his

cruel treatment and brutal acts. *Reynolds v. Reynolds*, 132 M 303, 317 P 2d 856, 859.

21-115. (5747) Wilful neglect, what constitutes.**References**

Cited in *Murphy v. Murphy*, 134 M 594,
335 P 2d 296, 297.

21-117. (5749) Desertion, neglect or habitual intemperance, etc.**References**

Cited in *Murphy v. Murphy*, 134 M 594,
335 P 2d 296, 297.

21-118. (5750) Divorces denied, on showing what.**Recrimination**

The doctrine of recrimination is that if both parties have a right to divorce, neither party has. The principle is of ancient origin and reached back to the Mosaic Code and beyond. Although the Roman law did not allow divorce yet some legal historians trace the rule back to the "compensatio criminum" of the Roman law relating to property settlements. The ecclesiastical courts of England adopted the principle from the canon law and then injected it into proceedings for separation from bed and board. *Bissell v. Bissell*, 129 M 187, 284 P 2d 264, 270.

It is not an absolute but a qualifying doctrine. If it were to be applied strictly great inequity would be done, for it so often happens that neither party to a suit has been free from fault. *Bissell v. Bissell*, 129 M 187, 284 P 2d 264, 271.

When the record clearly shows "the legitimate objects of the marriage have been destroyed" then the parties are entitled to have the marriage dissolved. No public policy would be served by denying a divorce because each party was guilty of extreme cruelty toward the other. *Bissell v. Bissell*, 129 M 187, 284 P 2d 264, 271.

Doctrine of recrimination was inapplicable where court found that defendant husband was not guilty of the infliction of extreme cruelty upon the plaintiff wife, nor was he guilty of the infliction of grievous mental suffering upon the plaintiff. *Bell v. Bell*, 133 M 572, 328 P 2d 115, 120.

References

Cited or applied in *Deich v. Deich*, 136 M 566, 323 P 2d 35, 45.

21-120. (5752) Collusion, what constitutes.**References**

Cited or applied in *Deich v. Deich*, 136 M 566, 323 P 2d 35, 45.

21-122. (5754) Requisites to condonation.**Absence of Good Faith**

Offers and solicitation of condonation were not made in good faith and did not bar plaintiff's action for separate maintenance where record showed that defendant was exploring the possibility of obtaining a church annulment of the mar-

riage; there was an absence of good faith on his part in seeking condonation; and there was no evidence tending to show that plaintiff would be free of danger of renewed cruelty were she to return and live with defendant. *Reynolds v. Reynolds*, 132 M 303, 317 P 2d 856, 858.

21-128. (5760) Recrimination, what constitutes.**Recrimination**

It is not an absolute but a qualifying doctrine. If it were to be applied strictly great inequity would be done, for it so

often happens that neither party to a suit has been free from fault. *Bissell v. Bissell*, 129 M 187, 284 P 2d 264, 271.

21-134. (5766) Period of residence required to entitle plaintiff, etc.**References**

Cited or applied in *Mortenson v. Mortenson*, 129 M 290, 285 P 2d 834, 836;

Reed v. Reed, 130 M 409, 304 P 2d 590, 593 at 595 (dissenting opinion).

21-135. (5767) Divorce not granted by default alone, etc.**References**

Cited or applied in *Reed v. Reed*, 130 M 409, 304 P 2d 590, 593 at 600 (dissenting opinion).

21-135.1. Waiting period before hearing on divorce or separate maintenance—reconciliation attempts. No hearing upon grounds for divorce shall be held in any action for divorce from the bonds of matrimony or for separate maintenance until at least twenty (20) days after the commencement of the action and service of process. During such period of twenty (20) days or longer, the court, upon application of one of the parties, may require a conference of the parties with a person or persons of their own choosing in order to determine whether or not a reconciliation is practicable.

In any action of divorce from the bonds of matrimony or for separate maintenance, where grounds for divorce or separate maintenance have been established, if the court finds that attempts at reconciliation are practicable and to the best interests of the family, it shall stay the proceedings for a period not to exceed ninety (90) days where there are minor children in the family.

History: En. Sec. 1, Ch. 167, L. 1963.

Title of Act

An act to require a compulsory waiting

period between the time of service of process and the hearing in a divorce action, and for a stay of proceedings to attempt reconciliation.

21-136. (5768) Relief may be adjudged, when divorce is denied.**Legislative Policy**

The apparent policy of the legislature in adopting this section was to discourage the incautious granting of divorces and in doubtful cases to give the court the authority to grant a separation rather than to destroy the vinculum of the marriage, the reason for this being that a reconciliation of the parties may be accomplished by legally separating them for a time thus permitting their passions and prejudices to subside and for the further and more important reason that the children, if any, resulting from the marriage must come foremost in the court's consideration. *Reed v. Reed*, 130 M 409, 304 P 2d 590, 592. (Dissenting opinions, 130 M 409, 304 P 2d 590 at 593 and 605.)

Relief Not Requested

In divorce proceedings by husband in which wife's answer and cross action contained no reference to property settlement and no prayer for general relief, district court exceeded its jurisdiction when it made division of the sale proceeds of

property and impressed plaintiff's property with a lien. *Chapman v. Chapman*, 137 M 544, 354 P 2d 184, 186.

Separate maintenance may be granted to the wife without any pleading therefor. *Chapman v. Chapman*, 137 M 544, 354 P 2d 184, 186.

Separate Maintenance

There is no authority in the Montana Civil Code whereby the courts, by statute, could grant a divorce where only separate maintenance is sought. *Reed v. Reed*, 130 M 409, 304 P 2d 590, 592. (Dissenting opinions, 130 M 409, 304 P 2d 590 at 593 and 605.)

Where a wife files a complaint seeking separate maintenance the court cannot, in finding for the wife, decree an absolute divorce in her favor, since the court may not grant any relief beyond that which is sought for by the prevailing party. *Reed v. Reed*, 130 M 409, 304 P 2d 590, 592. (Dissenting opinions, 130 M 409, 304 P 2d 590 at 593 and 605.)

21-137. (5769) Expenses of action—alimony.**Attorney's Fees**

Additional attorney's fee was properly disallowed wife where she had been found

guilty of gross misconduct. *Bell v. Bell*, 133 M 572, 328 P 2d 115, 121.

Attorneys' fees are wholly within the discretion of the court to grant upon a showing of necessity. *Bell v. Bell*, 133 M 572, 328 P 2d 115, 121.

Costs and counsel fees may be allowed on motion to modify child custody. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 231, 232, overruling *Wilson v. Wilson*, 128 M 511, 516, 278 P 2d 219, 222, and reinstating *McDonald v. McDonald*, 124 M 26, 218 P 2d 929, 15 ALR 2d 1260; *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1096, 1097.

An order for temporary attorney's fees is in the nature of a retainer and is but an estimate by the court, exercising its best judgment, of the value of the services that can be reasonably anticipated to be necessary. *Kronmiller v. Kronmiller*, 136 M 101, 345 P 2d 168, 170.

In fixing an estimated amount for temporary attorney's fees to be allowed the plaintiff, the court should be governed by what is fair and reasonable, having in mind the needs of the plaintiff, the financial ability of the defendant, and the manner in which she has been accustomed to live and should leave an incentive for reconciliation rather than fix a premium for separation. *Kronmiller v. Kronmiller*, 136 M 101, 345 P 2d 168, 170.

Where husband accepted the provisions for court costs and temporary support, he could not contend on appeal that wife had sufficient funds to provide for her own attorney. *Crum v. Crum*, 137 M 407, 352 P 2d 988, 989.

Continuing Jurisdiction

Generally the court's jurisdiction is continuing in child custody matters. *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1095.

Expenses of Action

Upon timely and proper application made in advance of the performance of the professional services and the incurring of expenses rested within the discretion of the trial court to grant expense money regardless of whose acts and conduct were

responsible for the granting of the divorce. *Bissell v. Bissell*, 129 M 187, 284 P 2d 264, 269.

Jurisdiction

Proceedings for divorce undoubtedly are statutory, but jurisdiction in matters of divorce is constitutional and may not be abridged. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 232.

Maintenance Money

Although this section uses the term "alimony" generically to mean "any money necessary to enable the wife to support herself or her children," it is distinguishable from money for support of wife provided in section 21-139. *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1098.

Property Rights

Where plaintiff was granted an absolute divorce from defendant wife, the court did not exceed its authority in finding and holding that the defendant wife was entitled to be reimbursed for money advanced to plaintiff, which was used to accumulate the property held by the plaintiff. *Johnson v. Johnson*, 137 M 11, 349 P 2d 310, distinguished in 137 M 544, 548, 354 P 2d 184, 186.

Reduction of Support and Maintenance

Award of \$700 per month for support and maintenance was reduced to \$300 where parties were married only 27 days until separation took place; plaintiff did nothing to help accumulate the financial resources held by defendant; she had been receiving about \$25 per week as wages in Ireland prior to her marriage; she had not been accustomed to living in New York City and evidence showed that apartments were available at the cost of about \$100 per month. *Reynolds v. Reynolds*, 132 M 303, 317 P 2d 856, 859.

References

Cited or applied in *Reed v. Reed*, 130 M 409, 304 P 2d 590, 593 at 595 (dissenting opinion).

21-138. (5770) Orders respecting custody of children.

Appeal

In the absence of a strong showing of abuse of discretion by district court, custody orders should not be disturbed on appeal. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 226.

Attorney's Fees

Costs and counsel fees may be awarded in custody modifications. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 231, 232, overruling *Wilson v. Wilson*, 128

M 511, 516, 278 P 2d 219, 222, and reinstating *McDonald v. McDonald*, 124 M 26, 218 P 2d 929, 15 ALR 2d 1260; *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1096, 1097.

Continuing Jurisdiction

Generally the court's jurisdiction is continuing in child custody matters. *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1095.

Custody of Children

The statutes expressly invest the trial judge with much discretion regarding the custody of children. *Wilson v. Wilson*, 128 M 511, 278 P 2d 219, 222.

Habeas Corpus to Gain Custody

When decree of divorce was rendered in Utah and custody of children was granted to mother she then had the preference right. She waived this right when she offered to give up their custody and father took them to his home in Montana, and she could not deprive father of custody by habeas corpus proceedings in Montana unless he was an unfit person to have the custody, or unless it was shown that the best welfare of the children required that they be taken from him. *State ex rel. Lessley v. District Court*, 132 M 357, 318 P 2d 571, 574.

Interlocutory Nature

Child custody orders are interlocutory in nature. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 226; *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1097.

Jurisdiction

Although proceedings for divorce are undoubtedly statutory, jurisdiction in matters of divorce is constitutional and may not be abridged. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 232.

Modification

Child custody orders are modifiable in the sound discretion of the district court for good cause shown. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 226.

In hearings on motions to modify child custody orders, parties desiring written findings of facts and conclusions of law must move for them in writing at the close of the evidence, as the statute requires. Even then, if the evidence justifies but one conclusion, formal findings are not necessary. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 230.

In the absence of statute, the court need not make formal findings of fact in support of its order modifying the custody provisions of divorce decrees. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 229.

Mother's affidavit on which citation for hearing on modification of custody decree was issued was properly controverted by father's verified answer. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 229.

When the custodial fitness of neither spouse is questioned a bill of exceptions and a judgment roll reflecting four modifications of custody orders in nine weeks, no matter how well intended or by whom sought or ordered, supported by undis-

puted testimony, is clear prima facie record of substantial change affecting the children warranting modification of decree. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 228.

Father who refuses to make payments for support of children required by the decree is not entitled to petition for modification of the decree unless the best interests and welfare of the children require the modification. *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1098.

Mother Preferred

Other things being equal, custody in the mother is to be preferred where children are of tender years. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 226.

Operation and Effect

An order by a California court which modified a prior California divorce decree and awarded custody of minor children to the father was void because it was made without jurisdiction where it was shown that the children were domiciled in Montana with their mother, even though the mother made a general appearance in the California court to contest the modification. Where the minor's domicile is not within the jurisdiction at the time, the "res" likewise is not within the jurisdiction. The courts may not proceed even with both parents before it. A minor has a juristic status of his own to which it is difficult indeed to deny recognition when his custody is the question before the court, and even though the contest is between his parents, who themselves have submitted to the jurisdiction of the court. For he is the real party in interest in any such case as is evidenced by the familiar rule that in awarding his custody the paramount inquiry is always his welfare and best interests. *Application of Enke*, 129 M 353, 287 P 2d 19, 24, cert. den. 350 U S 923, 100 L Ed 808, 76 S Ct 212.

Order of Visitation

The privilege of visitation should not be left entirely to the discretion of the party having the child in custody. *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1097.

Right of visitation may be conditioned upon prompt payment of money decreed for support of children. *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1098.

Residence of Children

Limitations on residence of children are to be conditioned by what appears best for the children and the trial judge is invested with much discretion in these matters. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 230; *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1097.

There was no abuse in the discretion exercised by the district court in refusing to restrict residence of children where their well-being was not so much dependent upon continuance or change of their present residence as upon change in their parents' hearts. *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1097.

Stay of Appeal

An appeal from an order modifying divorce decree does not stay the enforcement of the order. It can only be stayed by an application for an order staying the proceedings under section 93-8003, subd. 2. *Application of Nelson*, 132 M 252, 316 P 2d 1058, 1097.

21-139. (5771) Support of wife and children on divorce, etc.

"Maintenance Money" Distinguished

The term "alimony" as used in this section is distinguishable from "maintenance money" provided by section 21-137. *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1098.

Modification of Custody Orders

Costs and counsel fees may be allowed on motion to modify child custody. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 231, 232, overruling *Wilson v. Wilson*,

128 M 511, 516, 278 P 2d 219, 222, and reinstating *McDonald v. McDonald*, 124 M 26, 218 P 2d 929, 15 ALR 2d 1260; *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1096, 1097.

References

Cited or applied in *Wilson v. Wilson*, 128 M 511, 278 P 2d 219, 222, overruled in 329 P 2d 232; *Johnson v. Johnson*, 137 M 11, 349 P 2d 310, 312.

21-142. (5774) Property may be subjected to support, etc.

References

Cited in *Johnson v. Johnson*, 137 M 11, 349 P 2d 310, 312.

21-145. (5777) Disposition of homestead on divorce.

References

Cited in *Johnson v. Johnson*, 137 M 11, 349 P 2d 310, 312.

21-150. Divorces granted by other jurisdictions—when not recognized.

An ex parte divorce from the bonds of matrimony obtained in another jurisdiction shall be of no force and effect in this state, if both parties to the marriage were domiciled in this state at the time the proceeding for the divorce was commenced. Proof that a person obtaining an ex parte divorce from the bonds of matrimony in another jurisdiction was (a) domiciled in this state within twelve months prior to the commencement of the proceeding therefor, and resumed residence in this state within eighteen months after the date of his departure therefrom, or (b) at all times after his departure from this state and until his return maintained a place of residence within this state, shall be prima facie evidence that the person was domiciled in this state when the divorce proceeding was commenced. Otherwise, the burden for impeaching the validity of a foreign divorce decree shall rest upon the assailant and prima facie validity shall be accorded to divorce decrees of sister states.

History: En. Sec. 1, Ch. 168, L. 1963.

Title of Act

An act to provide rules for the recogni-

tion of ex parte foreign divorces and establishing certain presumptions as to domicile.

TITLE 22—DOWER

CHAPTER 1—DOWER

22-101. (5813) Dower.

Construction of Borrowed Statutes

The dower statutes, being borrowed from Illinois, will receive the same construction by the Montana courts as previously given by the courts of Illinois. In *re Roberts' Estate*, 135 M 149, 338 P

2d 719. Certiorari denied 361 U S 825, 4 L Ed 73, 80 S Ct 82.

References

Cited in *Purcell v. Gibbs*, 133 M 481, 326 P 2d 679.

22-107. (5819) Widow may elect.

Effect of Renunciation

Where the testator left a will and his estate consisted entirely of personal property, the widow, as sole survivor, could not defeat the legacies contained therein

and create an intestacy by renouncing under the provisions of this section. In *re Roberts' Estate*, 135 M 149, 338 P 2d 719. Certiorari denied 361 U S 825, 4 L Ed 73, 80 S Ct 82.

22-108. (5820) Renunciation and form of.

References

Cited in *In re Roberts' Estate*, 135 M

149, 338 P 2d 719, 720. Certiorari denied 361 U S 825, 4 L Ed 73, 80 S Ct 82.

22-116. (5828) Right to dower not affected by acts of husband.

Operation and Effect

Where vendor's wife did not sign a contract for deed, and there was no evidence that she intended to join in a deed conforming to the contract for deed,

no action would lie against her for reformation of the deed to conform to the contract. *Schillinger v. Huber*, 133 M 80, 320 P 2d 346, 350.

TITLE 23—ELECTIONS

- Chapter 3. Qualifications and privileges of electors, 23-304.
5. Registration of electors, 23-503, 23-511, 23-515, 23-519, 23-527.
 6. Judges and clerks of elections, 23-604.1, 23-604.2, 23-605, 23-608, 23-612.
 7. Election supplies, 23-704.
 9. Party nominations by direct vote—the direct primary, 23-902, 23-908, 23-909, 23-912, 23-929.
 10. Presidential electors and delegates to national conventions, 23-1006.
 12. Conducting elections—the polls—voting and ballots, 23-1210, 23-1213, 23-1219.
 13. Voting by absent electors, 23-1301, 23-1302(1), 23-1302(2), 23-1303, 23-1303.1, 23-1306, 23-1307, 23-1309, 23-1311 to 23-1313, 23-1320.
 14. Voting by absent electors in United States service, 23-1401 to 23-1405.
 16. Voting machines—conduct of election when used, 23-1608, 23-1608A, 23-1611.
 17. Election returns, 23-1702, 23-1703, 23-1709, 23-1712, 23-1714, 23-1715.
 18. Canvass of election returns—results and certificates, 23-1807, 23-1808, 23-1813, 23-1815.
 20. Nonpartisan nomination and election of judges of supreme court and district courts, 23-2001, 23-2003, 23-2005.
 23. Recount of ballots—results, 23-2309 to 23-2323.

CHAPTER 2—PUBLICATION OF QUESTIONS SUBMITTED TO POPULAR VOTE

23-201. (537.1) Publication and printing of amendments, etc.

Cross-Reference

Explanation of initiative, referendum

and Constitutional measures to be prepared by attorney general, sec. 37-104.1.

CHAPTER 3—QUALIFICATIONS AND PRIVILEGES OF ELECTORS

Section 23-304. Lists and precinct registers.

23-304. Lists and precinct registers. After the closing of registrations the county clerk of each county shall promptly prepare lists of registered electors of all voting precincts in his county. He shall also prepare the precinct register for each precinct in the manner provided by section 23-515, and deliver the same to the judges of election prior to the opening of the polls. In preparing precinct registers it shall not be necessary for the county clerk to make separate precinct registers containing only the names of electors who are qualified to vote on the question of the incurring of a state debt, the issuance of bonds or debentures by the state or the levying of a state tax. In lieu of preparing such a list of electors qualified to vote on such question, the county clerk shall stamp the word "TAX-PAYER" on the precinct register opposite the name of each qualified elector who is a taxpayer and entitled to vote upon any of the questions hereinbefore indicated. No other showing shall be required to establish that such elector is in fact a taxpayer and entitled to vote as such.

All of the laws of this state applying to the holding of general biennial state elections, insofar as the same are applicable thereto and not in conflict with any of the provisions of this act, shall apply to, and govern and control such election and the canvassing and return of the votes cast on such question at such election; and abstracts made by the several county

clerks shall be returned to the secretary of state in the manner provided by sections 23-1812, 23-1813, for the abstract of votes for state officers.

History: En. Sec. 2, Ch. 28, L. 1945; amd. Sec. 1, Ch. 92, L. 1949; amd. Sec. 1, Ch. 64, L. 1959.

Amendment

The 1959 amendment substituted the words "precinct register" for the words "poll books" each time they appear.

CHAPTER 5—REGISTRATION OF ELECTORS

- Section 23-503. Method of registering.
 23-511. Cancellation of registry for failure to vote—reregistration—exception of persons in United States service.
 23-515. Precinct register—combining—when not furnished city or town.
 23-519. Compensation of county clerks.
 23-527. Omission of name from precinct registers—remedy.

23-503. (555) Method of registering. Any elector residing within the county may register by appearing before the county clerk and ex officio registrar and making correct answers to all questions propounded by the county clerk touching the items of information called for by such registry card, and by signing and verifying the affidavit or affidavits on the back of such card. Any elector in the United States service who is absent from the state of Montana and the county of which he or she is a resident may register either (a) by mailing such registry card filled out and signed under oath to the county clerk of the county in which said elector resides, or (b) by mailing the federal post card application filled out and signed under oath to said county clerk.

If any person shall falsely personate another and procure the person so personated to be registered, or if any person shall represent his name to the county clerk or to the registration clerk or to any other person qualified to register an elector, to be different from what it actually is, and cause such name to be registered, or if any person shall cause any name to be placed upon the registry lists otherwise than in the manner provided in this act, he shall be guilty of a felony, and upon conviction be imprisoned in the state penitentiary for not less than one (1) nor more than three (3) years.

History: En. Sec. 8, Ch. 122, L. 1915; re-en. Sec. 555, R. C. M. 1921; amd. Sec. 4, Ch. 172, L. 1937; amd. Sec. 1, Ch. 83, L. 1953; amd. Sec. 1, Ch. 18, L. 1959.

Amendment

The 1959 amendment substituted the present second sentence in the first paragraph for a former sentence for text of which see parent volume.

23-511. (562) Cancellation of registry for failure to vote—reregistration—exception of persons in United States service. Immediately after every general election, the county clerk of each county shall compare the list of electors who have voted at such election in each precinct, as shown by the official poll books, with the official register of said precinct, and he shall remove from the official register herein provided for the registry cards of all electors who have failed to vote at such election, and shall mark each of said cards with the word "cancelled," and shall place such cancelled cards for the entire county in alphabetical order in a separate drawer to be known as the "cancelled file"; but any elector whose card is thus removed from the official register may reregister in the same manner as his original

registration was made, and the registration card of any elector who thus reregisters shall be filed by the county clerk in the official register in the same manner as original registration cards are filed. The county clerk shall, at the same time, cancel, by drawing a red line through the entry thereof, the name of all such electors who have failed to vote at such election.

In the case of an elector in the United States service who shall fail to vote, his or her registry card shall not be cancelled, except for causes designated under section 23-518.

History: En. Sec. 15, Ch. 122, L. 1915; re-en. Sec. 562, R. C. M. 1921; amd. Sec. 1, Ch. 147, L. 1937; amd. Sec. 1, Ch. 144, L. 1941; amd. Sec. 1, Ch. 177, L. 1943; amd. Sec. 2, Ch. 18, L. 1959.

Amendment

The 1959 amendment substituted the present second paragraph for the former second paragraph for the text of which see parent volume.

23-515. (568) Precinct register—combining—when not furnished city or town. During the time intervening between the closing of the official register and the day of the ensuing election, the county clerk shall prepare for each precinct a book to be known as the “precinct register” which shall be for the use of the clerks and judges of election in each such precinct. Such books shall be arranged for the listing of the names of the electors in alphabetical divisions, each division to be composed of ruled columns with appropriate headings, under which the information contained upon the registry card of each elector shall be transcribed, excepting the oath of the elector, and the certified copy of the precinct registers so prepared shall be delivered to the judges of the election at or prior to the opening of the polls in each precinct. Where the precincts in municipal elections, or in elections in school districts of the first class, include more than one county precinct, the county clerk shall combine into one precinct register the names of all electors in the several precinct registers of the precincts of which such municipal or school district precinct is composed. The county clerk shall omit from the list of names of all certified voters so inserted in the precinct register herein provided for, the names and registry of all electors which it is the duty of the county clerk to cancel under the provisions of section 23-518, provided that the requirements contained in the provisions of said section shall have been brought to the attention of the county clerk not less than twenty days preceding the election. If the city clerk of any city or town shall, in writing, certify to the county clerk, not less than twenty-five days before the date fixed by law for the holding of any primary nominating election, that no petitions for nomination under the direct primary election law for any office to be filled at the next ensuing annual city election have been filed with such city clerk, not less than thirty days before the date fixed by law for the holding of the primary nominating election, then the county clerk shall not prepare for the city any precinct register or precinct registers for that year.

History: En. Sec. 23, Ch. 113, L. 1911; amd. Sec. 23, Ch. 74, L. 1913; amd. Sec. 18, Ch. 122, L. 1915; amd. Sec. 3, Ch. 97, L. 1919; re-en. Sec. 568, R. C. M. 1921; amd. Sec. 2, Ch. 61, L. 1933; amd. Sec. 2, Ch. 64, L. 1959.

Amendment

The 1959 amendment substituted the words “precinct register” or “precinct registers” for the words “poll book” or “poll books” each time they appear.

23-519. (571) Compensation of county clerks. The county clerks shall receive, for the use and benefit of the county, from every city or town, or from every school district of the first class, (to which the precinct registers referred to in the last section have been furnished), the sum of three (\$.03) cents for each and every name entered in such precinct registers, and in addition he shall receive in like manner the amount of the actual expense incurred in printing and posting the lists of electors, and in publishing the notices required by this law, and any other expense incurred on account of any such municipal or school district election. It shall be the duty of the city or town council, or board of school trustees, to order a warrant drawn for such sum as may be due to the county clerk under the provisions of this section, within thirty (30) days after the presentation of the account to them by said county clerk, provided, however, that in event of the election of candidates at municipal primary elections, as provided for in 11-3113, and no general municipal election is required to be held, the county clerk shall prepare no precinct registers for such general municipal election and shall make no charge therefor; provided further, that in elections of school districts of the first class if only as many candidates are nominated as there are vacancies to be filled, the county clerk shall furnish no precinct registers and make no charge therefor to such school district.

It shall be the duty of the city clerk or the clerk of the school district to notify the county clerk in such case as above mentioned, where no precinct registers are required, immediately after the facts become known to the city council or the board of trustees of the school district, which makes unnecessary the furnishing of such precinct registers.

History: En. Sec. 29, Ch. 113, L. 1911; amd. Sec. 29, Ch. 74, L. 1913; amd. Sec. 21, Ch. 122, L. 1915; re-en. Sec. 571, R. C. M. 1921; amd. Sec. 1, Ch. 71, L. 1935; amd. Sec. 3, Ch. 64, L. 1959.

Amendment

The 1959 amendment substituted the words "precinct registers" for the words "poll books" each time they appear.

23-527. (579) Omission of name from precinct registers—remedy. Any elector whose name is erroneously omitted from any precinct register may apply for and secure from the county clerk a certificate of such error, and stating the precinct in which such elector is entitled to vote, and upon the presentation of such certificate to the judges of election in such precinct, the said elector shall be entitled to vote in the same manner as if his name had appeared upon the precinct register. Such certificate shall be marked "voted" by the judges, and shall be returned by them with the precinct register.

History: En. Sec. 29, Ch. 122, L. 1915; re-en. Sec. 579, R. C. M. 1921; amd. Sec. 4, Ch. 64, L. 1959

Amendment

The 1959 amendment substituted the words "precinct register" for either the words "precinct poll-book" or "poll book" each time they appear.

CHAPTER 6—JUDGES AND CLERKS OF ELECTIONS

- Section 23-604.1. Candidates and relatives ineligible.
 23-604.2. School district elections—precinct elections.
 23-605. Compensation of election officers.
 23-608. Clerks to mail to judges notices of election—form of notices.
 23-612. Instructions of judges of elections.

23-604.1. Candidates and relatives ineligible. No person shall be appointed to serve as an election judge or election clerk who is a candidate, spouse of a candidate or one who is related to a candidate for office at such election within the second degree of consanguinity.

History: En. Sec. 1, Ch. 99, L. 1961.

Title of Act

An act relating to the qualifications of election judges and election clerks prohibiting a candidate, the spouse of a candidate or one related within the second

degree of consanguinity to a candidate from serving as an election judge or election clerk; excepting school elections and candidates for precinct committeeman and committeewoman; and containing a repealing clause.

23-604.2. School district elections—precinct elections. The provisions of this act [23-604.1, 23-604.2] shall not apply to school district elections nor to candidates for precinct committeeman and committeewoman.

History: En. Sec. 2, Ch. 99, L. 1961.

all acts and parts of acts in conflict therewith.

Repealing Clause

Section 3 of Ch. 99, Laws 1961 repealed

23-605. (591) Compensation of election officers. The compensation of members of boards of election, including judges and clerks, shall be fixed by the board of county commissioners at not to exceed one dollar twenty-five cents (\$1.25) per hour for the time actually on duty, and must be audited by the board of county commissioners and paid out of the county treasury.

History: En. Sec. 1173, Pol. C. 1895; re-en. Sec. 459, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1917; re-en. Sec. 591, R. C. M. 1921; amd. Sec. 1, Ch. 49, L. 1945; amd. Sec. 1, Ch. 117, L. 1947; amd. Sec. 1, Ch. 12, L. 1951; amd. Sec. 1, Ch. 46, L. 1963. Cal. Pol. C. Sec. 1072.

Amendment

The 1963 amendment increased the maximum hourly compensation from \$1.00 to \$1.25.

23-608. (594) Clerks to mail to judges notices of election—form of notices. The clerks of the several boards of county commissioners must, at least twenty (20) days before any general election, make and forward by mail to such judge or judges as are designated by the county commissioners, three written notices for each precinct, said notices to be substantially as follows:

Notice is hereby given that on the first Tuesday after the first Monday of November, 19__, at the house _____, in the county of _____, an election will be held for _____ (naming the offices to be filled, including electors of president and vice-president, a representative in congress, state, county and township officers), and for the determination of the following questions (naming them), the polls of which election will be open at 8:00 A.M. and continuing open until 8:00 P.M. of the same day.

Dated this _____ day of _____, A.D. 19__.

Signed A. B., clerk of the board of county commissioners.

History: Ap. p. Sec. 7, p. 461, Cod. Stat. 1871; re-en. Sec. 7, p. 71, L. 1876; re-en. Sec. 521, 5th Div. Rev. Stat. 1879; re-en. Sec. 1013, 5th Div. Comp. Stat. 1887; amd.

Sec. 1266, Pol. C. 1895; re-en. Sec. 506, Rev. C. 1907; re-en. Sec. 594, R. C. M. 1921; amd. Sec. 2, Ch. 167, L. 1945; amd. Sec. 1, Ch. 14, L. 1957.

Amendment

The 1957 amendment substituted "8:00 A. M. and continuing open until 8:00 P. M." for "8 o'clock in the morning and continuing open until 6 o'clock in the afternoon."

23-612. Instructions of judges of elections. Before each election, general or primary, all judges appointed to act at said election, who do not possess a certificate of instruction as provided for in this act shall be instructed by a person delegated by the board of county commissioners in regard to the powers, duties, and liabilities imposed upon election judges by the election laws of the state of Montana. For the purpose of giving such instruction, the delegate of the board of county commissioners shall call such meeting or meetings of the judges of election as shall be necessary. Each judge of election shall attend such meeting or meetings and receive at least two (2) hours of instruction, and as compensation for the time spent in receiving such instruction, each judge that shall serve in the election shall receive the sum of one dollar (\$1.00) per hour of instruction, to be paid to him at the same time and in the same manner as compensation is paid to him for his or her services on election day.

Upon the completion of the two (2) hours of instruction, the judge shall receive a certificate from the person delegated by the board of county commissioners from whom he or she has received instruction, that the instruction has been completed, provided that no certificate of instruction shall be valid for a period of greater than two (2) years. No person shall serve as a judge of election unless this certificate has been received, provided, however, that this shall not prevent the appointment of a judge of election to fill a vacancy in an emergency. Notice of place and time of instruction of the political judges must be given by the board of county commissioners to the county chairmen of the two major political parties in the county.

History: En. Sec. 1, Ch. 210, L. 1957.

Title of Act

An act to provide for instruction of election judges; providing for the appointment by the board of county commissioners of an instructor; providing for compensation for the election judges being instructed; providing for certificates of instruction; providing for notice to the

county chairman of the two major political parties of the county of the place and time of instruction; and containing a repealing clause.

Repealing Clause

Section 2 of Ch. 210, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 7—ELECTION SUPPLIES

Section 23-704. County commissioners to have blanks prepared.

23-704. (602) County commissioners to have blanks prepared. The necessary printed blanks for precinct registers, pollbooks, tally sheets, lists of electors, tickets, and returns, together with envelopes in which to inclose the returns, must be furnished by the board of county commissioners to the officers of each election precinct at the expense of the county.

History: En. Sec. 1174, Pol. C. 1895; re-en. Sec. 460, Rev. C. 1907; re-en. Sec. 602, R. C. M. 1921; amd. Sec. 5, Ch. 64, L. 1959.

Amendment

The 1959 amendment substituted "precinct registers, pollbooks, tally sheets" for "poll-lists, tally lists."

CHAPTER 9—PARTY NOMINATIONS BY DIRECT VOTE—
THE DIRECT PRIMARY

- Section 23-902. Date of holding primary election—purpose of.
 23-908. Poll-books, precinct register, and tally sheets to be sealed and returned.
 23-909. Political party nominations made exclusively as herein provided.
 23-912. Time for filing petitions for nominations.
 23-929. County and city central committeemen, how elected.

23-902. (632) Date of holding primary election—purpose of. On the first Tuesday of June, preceding any general election not including special elections to fill vacancies, municipal elections in towns and cities, irrigation district and school elections, at which public officers in this state and in any district or county are to be elected, a primary nominating election shall be held in accordance with this act in the several election precincts comprised within the territory for which such officers are to be elected at the ensuing election, which shall be known as the primary nominating election, for the purpose of choosing candidates by the political parties, subject to the provisions of this act, for United States senators and representatives, in Congress and all other elective state, district and county officers, and delegates to any constitutional convention or conventions that may hereafter be called, who are to be chosen, at the ensuing election wholly by electors within the state, or any subdivision of this state, and also for choosing and electing county central committeemen and committeewomen by the several parties subject to the provisions of this act.

History: En. Sec. 2, Initiative Measure Nov. 1912; re-en. Sec. 632, R. C. M. 1921; amd. Sec. 1, Ch. 118, L. 1925; amd. Sec. 1, Ch. 3, L. 1927; amd. Sec. 12, Ch. 214, L. 1953 (Referendum Measure adopted November 2, 1954 effective December 7, 1954); amd. Sec. 1, Ch. 266, L. 1955; amd. Sec. 1, Ch. 274, L. 1959.

Amendment

The 1959 amendment deleted a clause which immediately preceded the final clause pertaining to county committeemen and which read, "for the purpose of expressing preferences for candidates for president of the United States."

23-908. (638) Poll-books, precinct register, and tally sheets to be sealed and returned. (1) Immediately after canvassing the votes in the manner aforesaid, the judges and clerks who complete the count, before they separate or adjourn shall inclose the poll-books in separate covers and securely seal the same. They shall also inclose the tally sheets in separate envelopes and seal the same securely. They shall also inclose the precinct registers in separate envelopes and seal the same securely. They shall also envelope all the ballots fastened together, as aforesaid, and seal the same securely; and they shall in writing, with pen and ink, specify the contents, and address each of said packages upon the outside thereof to the county clerk of the county in which the election precinct is situated. These sealed packages of counted ballots shall be marked on the outside, showing what numbers are contained therein, but once sealed they are not to be opened by any one until so ordered by the proper court.

(2) When the count is completed, the ballots counted and sealed, and enveloped and marked for identification as aforesaid, shall be packed in the two ballot-boxes, and nothing else shall be put into the boxes. The boxes shall then be locked, and the official seal of the board shall be pasted over the keyhole and over the rim of the lid of the box, so that the box cannot

be opened without breaking the seal. Thereafter neither the county clerk nor the canvassers making the abstracts of the votes shall break the said seals upon the ballot-boxes, nor shall anyone break the seals on the boxes or the ballots, except upon the order of the proper court in case of contest, or upon the order of the county board when the boxes are needed for the ensuing election.

History: En. Sec. 7, Initiative Measure Nov. 1912; re-en. Sec. 638, R. C. M. 1921; amd. Sec. 6, Ch. 64, L. 1959.

Amendment

The 1959 amendment added the third sentence in subd. (1).

23-909. (639) Political party nominations made exclusively as herein provided. Every political party which has cast three per centum (3%) or more of the total vote cast for representative in Congress at the next preceding general election in the county, district or state for which nominations are proposed to be made, shall nominate its candidates for public office in such county, district or state, under the provisions of this law, and not in any other manner; and it shall not be allowed to nominate any candidate in the manner provided by section 23-801. Every political party and its regularly nominated candidates, members, and officers, shall have the sole and exclusive right to the use of the party name and the whole thereof, and no candidate for office shall be permitted to use any word of the name of any other political party or organization than that of and by which he is nominated. No independent or nonpartisan candidate shall be permitted to use any word of the name of any existing political party or organization in his candidacy. The names of candidates for public office nominated under the provisions of this law shall be printed on the official ballots for the ensuing election as the only candidates of the respective parties for such public office in like manner as the names of the candidates nominated by other methods are required to be printed on such official ballots.

Any political party that did not cast three per centum (3%) or more of the total vote cast for representative in Congress, as above, and any new political party about to be formed or organized, [may] make nominations for public office as provided in section 23-801.

History: En. Sec. 8, Initiative Measure Nov. 1912; re-en. Sec. 639, R. C. M. 1921; amd. Sec. 1, Ch. 7, L. 1927; amd. Sec. 2, Ch. 266, L. 1955; amd. Sec. 2, Ch. 274, L. 1959.

Amendment

The 1959 amendment deleted several paragraphs setting forth the procedure for a presidential preference primary. For section prior to amendment see parent volume.

23-912. (644) Time for filing petitions for nominations. All petitions for nomination under this act for offices to be filled by the state at large or by any district consisting of more than one (1) county, and nominating petitions for judges of district courts in districts consisting of a single county, shall be filed in the office of the secretary of state not later than five (5) o'clock P. M. on any day not less than forty (40) days before the date of the primary nominating election; and for other offices to be voted for in only one (1) county, or district or city, every such petition shall be filed with the county clerk or city clerk as the case may be, not later than five (5) o'clock P. M. on any day not less than forty (40) days before the date of the primary nominating election.

History: En. Sec. 13, Initiative Measure Nov. 1912; re-en. Sec. 644, R. C. M. 1921; amd. Sec. 2, Ch. 133, L. 1923; amd. Sec. 1, Ch. 19, L. 1955; amd. Sec. 1, Ch. 38, L. 1961.

Amendment

The 1961 amendment inserted the words "not later than five (5) o'clock P. M. on any day" both times they appear in the section.

23-926. (659) Notice of contest.

Cross-Reference

Application of Montana Rules of Civil

Procedure to contest of nomination, see Table A, M. R. Civ. P. (sec. 93-2711-7).

23-929. (662) County and city central committeemen, how elected.

(1) to (4). * * * [Subdivisions (1) to (4), same as parent volume.]

(5) Said committee shall meet within fifteen (15) days after the primary election herein provided for, and shall organize by electing a chairman and one (1) or more vice-chairmen, provided that either the chairman or first vice-chairman shall be a woman. They shall also elect a secretary and such other officers as they shall think proper. It shall not be necessary for such officers to be precinct committeemen or committeewomen. They may select managing or executive committees and authorize such subcommittees to exercise any and all powers conferred upon the county, city, state and congressional central committees respectively by this law. The chairman of the county central committee shall call said central committee meeting and not less than ten (10) days before the date of said central committee meeting shall publish said call in a newspaper published at the county seat and shall mail a copy of the call, enclosing a blank proxy, to each precinct committeeman. No proxy shall be recognized unless held by an elector of the precinct of the committeeman executing the same.

(6) and (7). * * * [Subdivisions (6) and (7), same as parent volume.]

History: En. Sec. 32, Initiative Measure Nov. 1912; re-en. Sec. 662, R. C. M. 1921; amd. Sec. 1, Ch. 98, L. 1927; amd. Sec. 1, Ch. 34, L. 1929; amd. Sec. 1, Ch. 6, L. 1933; amd. Sec. 1, Ch. 84, L. 1939; amd. Sec. 1, Ch. 64, L. 1951; amd. Sec. 3, Ch. 266, L. 1955; amd. Sec. 1, Ch. 219, L. 1959.

Amendment

The 1959 amendment deleted from the beginning of subd. (5) the words "In each year when a president of the United States is to be elected."

Political Parties
**CHAPTER 10—PRESIDENTIAL ELECTORS AND DELEGATES
TO NATIONAL CONVENTIONS**

Section 23-1006. Time of state convention—election of presidential electors and delegates to national convention.

23-1006. (673.6) Time of state convention—election of presidential electors and delegates to national convention. Not later than fifteen (15) days after said county convention and on a date set by the chairman of the state central committee, the delegates (or alternate delegates, in case any elected delegate cannot attend), shall hold a state convention at the state capital in Helena, Montana, for the purpose of electing delegates and alternates to the national convention of the parties and presidential electors. That the delegates and alternate delegates to the national conventions of each political party shall consist of three (3) delegates from each of the congressional districts, and the remaining delegates and alternates from the state at large.

History: En. Sec. 6, Ch. 126, L. 1927; amd. Sec. 1, Ch. 55, L. 1953; amd. Sec. 14, Ch. 214, L. 1953 (Referendum Measure adopted November 2, 1954 effective December 7, 1954); amd. Sec. 5, Ch. 266, L. 1955; amd. Sec. 3, Ch. 274, L. 1959.

Amendment

The 1959 amendment deleted a sentence which appeared at the end of the section and read "The delegates and alternate delegates so elected shall support the

candidate whose candidacy is preferred as a result of the within primary until released by said candidate or unless said candidate shall not be nominated by said national convention or shall receive less than twenty per cent (20%) of the total votes cast on any ballot."

Repealing Clause

Section 4 of Ch. 274, Laws 1959 repealed all acts and parts of acts in conflict therewith.

CHAPTER 12—CONDUCTING ELECTIONS—THE POLLS—VOTING AND BALLOTS

- Section 23-1210. Method of voting.
 23-1213. Judges may aid disabled elector.
 23-1219. List of voters.

23-1210. (696) Method of voting. On receipt of his ballot the elector must forthwith, without leaving the polling-place and within the guard-rail provided, and alone, retire to one of the places, booths, or compartments, if such are provided, and prepare his ballot. He shall prepare his ballot by marking an "X" in the square before the name of the person or persons for whom he intends to vote. In case of a ballot containing a constitutional amendment, or other question to be submitted to the vote of the people, by marking an "X" in the square before the answer of the question or amendment submitted. The elector may write in the blank space or paste over any other name the name of any person for whom he wishes to vote, and vote for such person by marking an "X" before such name. No elector is at liberty to use or bring into the polling-place any unofficial sample ballot. After preparing his ballot the elector must fold it so the face of the ballot will be concealed and so that the indorsements stamped thereon may be seen, and hand the same to the judges in charge of the ballot-box, who shall announce the name of the elector and the printed or stamped number on the stub of the official ballot so delivered to him, in a loud and distinct tone of voice. If such elector be entitled then and there to vote, and if such printed or stamped number is the same as that entered on the poll-books as the number on the stub of the official ballot last delivered to him by the ballot judge, such judge shall receive such ballot, and, after removing the stub therefrom in plain sight of the elector, and without removing any other part of the ballot, or in any way exposing any part of the face thereof below the stub, shall deposit each ballot in the proper ballot-box for the reception of voted ballots, and the stubs in a box for detached ballot stubs. Upon voting, the elector shall forthwith pass outside the guard-rail, unless he be one of the persons authorized to remain within the guard-rail for other purposes than voting.

History: Ap. p. Sec. 24, p. 142, L. 1889; amd. Sec. 1361, Pol. C. 1895; amd. Sec. 1361, p. 119, L. 1901; amd. Sec. 5, Ch. 88, L. 1907; re-en. Sec. 552, Rev. C. 1907; re-en. Sec. 696, R. C. M. 1921; amd. Sec. 7, Ch. 64, L. 1959. Cal. Pol. C. Sec. 1205.

Amendment

The 1959 amendment in the next to the last sentence of this section substituted "poll-books" for "poll-list."

23-1213. (699) Judges may aid disabled elector. Any elector who declares to the judges of election, or when it appears to the judges of election that he cannot read or write, or that because of blindness or other physical disability he is unable to mark his ballot, but for no other cause, must, upon request, receive the assistance of two of the judges, who shall represent different parties, in the marking thereof, and said disabled elector may request that any qualified elector whom he designates to the judges, and in whom he has trust and confidence, shall also be permitted to aid him in the marking of his ballot, and such judges must certify on the official register opposite name of such disabled elector that it was so marked with their assistance, and indicate the name of the person if any of whom he requested and received assistance, and neither the judges nor, if such is the case, the person who aided him, must thereafter give information regarding the same. The judges must require such declaration of disability to be made by the elector under oath before them, and they are hereby authorized to administer the same. No elector other than the one who may, because of his inability to read or write, or of his blindness or physical disability, be unable to mark his ballot, must divulge to any one within the polling-place the name of any candidate for whom he intends to vote, or, other than herein specifically allowed, ask or receive the assistance of any person within the polling-place in the preparation of his ballot.

History: Ap. p. Sec. 27, p. 142, L. 1889; amd. Sec. 1364, Pol. C. 1895; amd. Sec. 1364, p. 120, L. 1901; re-en. Sec. 555, Rev. C. 1907; re-en. Sec. 699, R. C. M. 1921; amd. Sec. 1, Ch. 32, L. 1959; amd. Sec. 1, Ch. 77, L. 1961. Cal. Pol. C. Sec. 1208.

Amendments

The 1959 amendment added provisions that disabled elector may request qualified elector whom he designates to judges and in whom he has trust to aid him in marking his ballot.

The 1961 amendment substituted the last part of the first sentence, beginning with the words, "and said disabled elector may request," for the following: "or said disabled elector may request that any qualified elector whom he designates to the judges, and in whom he has trust and

confidence, aid him in the marking of his ballot, and such judges must certify on the outside thereof that it was so marked with their assistance, or the name of the person of whom he requested and received assistance, and neither the judges nor, if such is the case, the person who aided him, must thereafter give information regarding the same."

Repealing Clause

Section 2 of Ch. 32, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 32, Laws 1959 provided the act should be in effect immediately upon its passage and approval. Approved February 25, 1959.

23-1219. (705) List of voters. Each clerk must keep a list of persons voting, and the name of each person who votes must be entered thereon and numbered in the order voting. Such list is known as the poll-book.

History: En. Sec. 1370, Pol. C. 1895; re-en. Sec. 561, Rev. C. 1907; re-en. Sec. 705, R. C. M. 1921; amd. Sec. 8, Ch. 64, L. 1959. Cal. Pol. C. Sec. 1229.

Amendment

The 1959 amendment in the last sentence substituted the words "poll-book" for the words "poll-list and forms a part of the poll-book of the precinct."

CHAPTER 13—VOTING BY ABSENT ELECTORS

Section 23-1301. Voting by elector when absent from place of residence or physically incapacitated from going to polls.

23-1302(1), 23-1302(2). Application of absentee or physically incapacitated person for ballot.

- 23-1303. Form of application.
- 23-1303.1. Forms and regulations for absentee voting in school district elections.
- 23-1306. Mailing ballot to elector—form of return and affidavit.
- 23-1307. Marking and swearing to ballot by elector.
- 23-1309. Delivery or mailing of ballots to election judges.
- 23-1311. Duty of election judges—poll-books, numbering ballots and rejected ballots.
- 23-1312. Voting before election day by prospective absentee or physically incapacitated elector.
- 23-1313. Envelopes containing ballots—deposit in box and rejection of ballot.
- 23-1320. Duty of elector if present on election day.

23-1301. (715) Voting by elector when absent from place of residence or physically incapacitated from going to polls. Any qualified elector of this state, having complied with the laws in regard to registration, who is absent from the county or who is physically incapacitated from attending the precinct poll of which he is an elector on the day of holding any general or special election, or primary election for the nomination of candidates for such general election, or any municipal, school, general, special or primary election, may vote at any such election as hereinafter provided.

History: En. Sec. 1, Ch. 110, L. 1915; amd. Sec. 1, Ch. 155, L. 1917; re-en. Sec. 715, R. C. M. 1921; amd. Sec. 1, Ch. 234, L. 1943; amd. Sec. 1, Ch. 108, L. 1963.

Amendment

The 1963 amendment inserted "school" before "general, special or primary election" near the end of the section.

23-1302(1). (716) Application of absentee or physically incapacitated person for ballot. At any time within the period beginning forty-five (45) days next preceding such election and ending at 12 noon on the day next preceding the day of election, any elector expecting to be absent on the day of election from the county in which his voting precinct is situated, or any elector in United States service, or any elector who as a result of physical incapacity, in all probability will be unable to attend his voting precinct poll as made to appear by the certificate of a physician licensed under the laws of Montana, plainly stating the nature of the physical incapacity of the applicant, and certifying (a) that such incapacity will continue beyond the day of the election for which the application is made; (b) to the extent of reasonably preventing applicant from going to the polls, bodily health considered, may make application to the county clerk of such county, or to the city or town clerk, in the case of a municipal, general, or primary election, for an official ballot or official ballots to be voted at such election as an absent or physically incapacitated voter's ballot or ballots.

History: En. Sec. 2, Ch. 110, L. 1915; re-en. Sec. 2, Ch. 155, L. 1917; re-en. Sec. 716, R. C. M. 1921; amd. Sec. 2, Ch. 234, L. 1943; amd. Sec. 1, Ch. 104, L. 1953; amd. Sec. 3, Ch. 18, L. 1959; amd. Sec. 2, Ch. 124, L. 1963.

amendment and in some respects the section was amended differently by each chapter. The section above is as amended by Ch. 18. The section as amended by Ch. 216 is set out as section 23-1302(2).

Compiler's Note

This section was amended twice by the 1959 legislature. Once by Ch. 18 and once by Ch. 216. Chapter 18 was approved by the Governor, February 6, 1959 while Chapter 216 was approved March 11, 1959. Neither amendment mentioned the other

Amendments

The 1959 amendment by Ch. 18 of Laws 1959 substituted the word "elector" for the word "voter" which appeared after the words "days next preceding such election, any" and substituted the phrase "any elector in United States service, or any elector" for the phrase "or serving in

the armed services of the United States or in the merchant marines of the United States, or who is a civilian outside the United States officially attached to and serving with the armed forces of the United States."

The 1963 amendment inserted the words "the period beginning" preceding the words "forty-five (45) days" and the phrase "and ending at 12 noon on the day next preceding the day of election" following the words "preceding such election."

23-1302(2). (716) Application of absentee or physically incapacitated person for ballot. At any time within forty-five (45) days next preceding such election, any voter expecting to be absent on the day of election from the county in which his voting precinct is situated, for any reason whatsoever, or who as a result of physical incapacity, in all probability will be unable to attend his voting precinct poll as made to appear by his affidavit, plainly stating the nature of the physical incapacity of the applicant, and stating (a) that such incapacity will continue beyond the day of the election for which the application is made; (b) to the extent of reasonably preventing applicant from going to the polls, bodily health considered, may make application to the county clerk of such county, or to the city or town clerk, in the case of a municipal, general, or primary election, for an official ballot or official ballots to be voted at such election as an absent or physically incapacitated voter's ballot or ballots.

History: En. Sec. 2, Ch. 110, L. 1915; re-en. Sec. 2, Ch. 155, L. 1917; re-en. Sec. 716, R. C. M. 1921; amd. Sec. 2, Ch. 234, L. 1943; amd. Sec. 1, Ch. 104, L. 1953; amd. Sec. 1, Ch. 216, L. 1959.

as amended by Ch. 18 is set out as section 23-1302(1).

Amendment

The 1959 amendment by Ch. 216 of Laws 1959 substituted "for any reason whatsoever" for "or serving in the armed services of the United States or in the merchant marines of the United States, or who is a civilian outside the United States officially attached to and serving with the armed forces of the United States"; substituted "his affidavit" for "the certificate of a physician licensed under the laws of Montana" and substituted "stating" for "certifying."

Compiler's Note

This section was amended twice by the 1959 legislature. Once by Ch. 18 and once by Ch. 216. Chapter 18 was approved by the Governor, February 6, 1959 while Chapter 216 was approved March 11, 1959. Neither amendment mentioned the other amendment and in some respects the section was amended differently by each chapter. The section above is as amended by Ch. 216. The section

23-1303. (717) Form of application. Application for such ballots shall be made on a blank furnished by the county clerk of the county of which the applicant is an elector, or the city or town clerk, if it be municipal, general, special or primary election, and shall be in substantially the following form:

"I, _____, a duly qualified elector of the _____ precinct, in the county of _____, and State of Montana, and am to the best of my knowledge and belief entitled to vote in such precinct in the next election, expecting to be absent from said county or, in all probability, to be physically incapacitated from going to my precinct poll on the day for holding such election, hereby make application for an official ballot to be voted by me at the said election.

Post office address to which ballot is to be mailed _____

State of _____ }
County of _____ } ss.

On this _____ day of _____, personally appeared before me _____, who being first duly sworn, deposes and says that he is the person who signed the foregoing application, that he has read and knows the contents of same and knows to his own knowledge the matters and things therein stated are true.

This application must be subscribed by the applicant and sworn to before some officer authorized to administer oaths, pursuant to the laws of the place of execution, and the application shall not be deemed complete without this affidavit.

Provided that application for such ballot by any elector in the United States may be made by the federal post card application, or by any written request, signed by said applicant, addressed to the county clerk of the county of residence of said elector.

History: En. Sec. 3, Ch. 110, L. 1915; re-en. Sec. 3, Ch. 155, L. 1917; re-en. Sec. 717, R. C. M. 1921; amd. Sec. 1, Ch. 151, L. 1923; amd. Sec. 1, Ch. 32, L. 1941; amd. Sec. 3, Ch. 234, L. 1943; amd. Sec. 2, Ch. 104, L. 1953; amd. Sec. 1, Ch. 152, L. 1955; amd. Sec. 4, Ch. 18, L. 1959; amd. Sec. 2, Ch. 216, L. 1959.

Compiler's Note

This section was amended twice by the 1959 legislature. Once by Ch. 18, Laws 1959 and once by Ch. 216, Laws 1959. Chapter 18 was approved by the Governor, February 6, 1959 while Ch. 216 was approved March 11, 1959. Neither amend-

ment mentioned the other act and as the acts amended the section in different respects, the compiler has made a composite section, incorporating the changes made by each act.

Amendments

The 1959 amendment by Ch. 18 substituted the present last paragraph for the former last paragraph for text of which see parent volume.

The 1959 amendment by Ch. 216 inserted the words "pursuant to the laws of the place of execution" in the next to the last paragraph.

23-1303.1. Forms and regulations for absentee voting in school district elections. The state superintendent of public instruction shall prepare the form of application for absentee voter ballot for school districts and such other forms and regulations as may be necessary to carry out the purpose of this act, as it pertains to school districts.

History: En. Sec. 3, Ch. 108, L. 1963.

23-1306. (720) Mailing ballot to elector—form of return and affidavit. Upon receipt of such application, properly filled out and duly signed, or as soon thereafter as the official ballot for the precinct in which the applicant resides has been printed, the said county or city or town clerk shall send to such elector by mail, postage prepaid, one official ballot, or if there be more than one ballot to be voted by an elector of such precinct, one of each kind, and shall inclose with such ballot or ballots an envelope, to be fur-

nished by such county or city or town clerk, which envelope shall bear upon the front thereof the name, official title and post office address of such county or city or town clerk, and upon the other side a printed affidavit, in substantially the following form:

"State of _____ }
County _____ } ss.

I, _____, do solemnly swear that I am a resident of the _____ precinct, (and if he be a resident of a city or town, Add: 'Residing at _____, in the town or city of _____'), County of _____ and State of Montana, and entitled to vote in such precinct at the next election; that I expect to be absent from the said county of my residence or, in all probability, to be physically incapacitated from going to my precinct poll on the day of holding such election and that I will have no opportunity to vote in person on that day.

Subscribed and sworn to before me this _____ day of _____, 19____; and I hereby certify that the affiant exhibited to me the enclosed ballot or ballots for inspection before marking, and that the same was (or were) then unmarked and that he then in my presence, and in the presence of no other person, and in such manner that I could not see his vote, marked said ballot (or ballots) and inclosed and sealed the same in this envelope. That the affiant was not solicited or advised by me to vote for or against any candidate or measure.

Both the envelope in which the ballot is mailed to the elector in the United States service and the return envelope enclosed therein shall have printed across the face two parallel horizontal red bars, each one-quarter inch wide, extending from one side of the envelope to the other side, with an intervening space of one-quarter inch, the top bar to be one and one-quarter inches from the top of the envelope, and with the words "Official Election Balloting Material—via Air Mail," or similar language, between the bars; that there be printed in the upper right corner of each such envelope, in a box, the words "Free of U. S. Postage, Including Air Mail"; that all printing on the face of each such envelope be in red; and that there be printed in red in the upper left corner of each state ballot envelope an appropriate inscription or blanks for return address of sender.

The return envelope shall be self-addressed to the county or city or town clerk.

The county or city or town clerk shall enclose with the ballot mailed to the elector in the United States service instructions for voting and returning the ballot.

History: En. Sec. 6, Ch. 110, L. 1915, amd. Sec. 6, Ch. 155, L. 1917; re-en. Sec. 720, R. C. M. 1921; amd. Sec. 5, Ch. 234, L. 1943; amd. Sec. 5, Ch. 18, L. 1959.

Amendment

The 1959 amendment added the last three paragraphs of this section.

23-1307. (721) Marking and swearing to ballot by elector. Such voter shall make and subscribe the said affidavit before an officer authorized by law to administer oaths, pursuant to the laws of the place of execution and may do so at any place including any foreign country, before any officer authorized by the laws of the place of execution to take acknowledgments of instruments, and such voter shall thereupon, in the presence of such officer and of no other person, mark such ballot or ballots, but in such manner that such officer cannot see the vote, and such ballot or ballots thereupon, in the presence of such officer, shall be folded by such voter so that each ballot shall be separate, and so as to conceal the vote, and shall be, in the presence of such officer, placed in such envelope securely sealed. Said officer shall thereupon append his signature and official title at the end of said jurat and affidavit. Said envelope shall be mailed by such absent or physically incapacitated voter, postage prepaid, or delivered to the county or city or town clerk, as the case may be.

History: En. Sec. 7, Ch. 110, L. 1915; amd. Sec. 7, Ch. 155, L. 1917; re-en. Sec. 721, R. C. M. 1921; amd. Sec. 3, Ch. 151, L. 1923; amd. Sec. 6, Ch. 234, L. 1943; amd. Sec. 1, Ch. 60, L. 1953; amd. Sec. 3, Ch. 216, L. 1959.

Amendment

The 1959 amendment substituted the words "pursuant to the laws of the place of execution" for "and who has an official seal"; substituted "including any foreign

country" for "in the state of Montana, or in any other state or territory of the United States"; substituted "of the place of execution" for "without the state" and deleted the words "and affix his seal" which appeared after the words "and official title."

Repealing Clause

Section 4 of Ch. 216, Laws 1959 repealed all acts and parts of acts in conflict therewith.

23-1309. (723) Delivery or mailing of ballots to election judges. In case such envelope is received by such clerk prior to the delivery of the official ballots to a judge of election of the precinct in which such absent or physically incapacitated voter resides, said larger envelope, containing the said voter's envelope, and his said application as above provided, shall be delivered to the judge of election of such precinct, to whom the official ballots of the precinct shall be delivered, and at the same time. In case the official ballots for such precinct shall have been delivered to the judge of election prior to the time of the receipt by the said clerk of said absent or physically incapacitated voter's envelope, such clerk shall immediately after inclosing such voter's envelope and his application in a larger envelope, and after endorsing the latter as provided in the foregoing section, address and mail the larger envelope, postage prepaid, to the said judge of election of said precinct, as hereinafter further provided. If any absentee ballots are received by the clerk for which application was made after 12 noon on the day next preceding an election, the clerk shall endorse upon the voter's envelope the date and exact time of receipt and the words "To be rejected by authority of section 23-1309, R.C.M. 1947." Absentee ballots endorsed in this manner shall be delivered to the judge of election of said precinct and shall be rejected by the judge of election.

History: En. Sec. 9, Ch. 110, L. 1915; re-en. Sec. 9, Ch. 155, L. 1917; re-en. Sec. 723, R. C. M. 1921; amd. Sec. 8, Ch. 234, L. 1943; amd. Sec. 1, Ch. 124, L. 1963.

Amendment

The 1963 amendment added the third and fourth sentences to this section.

23-1311. (725) Duty of election judges—poll-books, numbering ballots and rejected ballots. The judges of election, at the opening of the polls, shall note on the poll-books opposite the numbers corresponding to the numbers of the ballots issued to absent or physically incapacitated voters, as shown by the certificate of the county or city or town clerk, the fact that such ballots were issued to absent or physically incapacitated voters, and shall reserve said numbers for the absent or physically incapacitated voters. The notation may be made by writing the words "absent or physically incapacitated voters" opposite such numbers.

The judges shall not allow any names to be inserted in the poll-books on the lines corresponding to said numbers, except the name of the elector entitled to each particular number according to the certificate of the county or city or town clerk, and the number of his ballot. Any so rejected shall be placed together with the voter's application and the absent or physically incapacitated voter's envelope provided for the purpose by the clerk and recorder or city or town clerk, which shall be sealed and endorsed by the words, "rejected absent or physically incapacitated voter ballots" numbered -----, and shall put thereon the number of the ballots given to absent or physically incapacitated voters according to the county or city or town clerk's certificate. There shall be a separate enclosing envelope for the ballot or ballots of each absent or physically incapacitated voter whose ballot or ballots may have been rejected, and such envelopes shall be placed in an envelope together with the other ballots, and shall not be opened without order of a court of competent jurisdiction.

History: En. Sec. 11, Ch. 110, L. 1915; amd. Sec. 11, Ch. 155, L. 1917; re-en. Sec. 725, R. C. M. 1921; amd. Sec. 10, Ch. 234, L. 1943; amd. Sec. 9, Ch. 64, L. 1959.

Amendment

The 1959 amendment in the first sentence substituted "poll-books" for "poll-lists, when one is required by law to be kept" and in the first sentence of the second paragraph substituted "poll-books" for "poll-list."

23-1312. (726) Voting before election day by prospective absentee or physically incapacitated elector. Any qualified elector who is present in his county after the official ballots of such county or school district have been printed and who has reason to believe that he will be absent from such county or school district on election day, or physically incapacitated as provided in section 23-1302 may vote before he leaves his county or school district or prior to the inception of such physical incapacity, in like manner as an absent or physically incapacitated voter, before the county or city or town clerk or school district clerk, or some officer authorized to administer oaths and having an official seal; and the provisions of this act shall be deemed to apply to such voting. If the ballot be marked before the county or city or town or school district clerk it shall be his duty to deal with it in the same manner as if it had come by mail.

History: En. Sec. 12, Ch. 110, L. 1915; amd. Sec. 12, Ch. 155, L. 1917; re-en. Sec. 726, R. C. M. 1921; amd. Sec. 11, Ch. 234, L. 1943; amd. Sec. 2, Ch. 108, L. 1963.

Amendment

The 1963 amendment extended this sec-

tion to school district elections by inserting "or school district" after "county" in three places in the first sentence, by inserting "or school district clerk" after "town clerk" in the first sentence, and by inserting "or school district" between "town" and "clerk" in the second sentence.

23-1313. (727) Envelopes containing ballots—deposit in box and rejection of ballot. At any time between the opening and closing of the polls on such election day, the judges of election of such precinct shall first open the outer envelope only, and compare the signature of such voter to such application, with the signature to such affidavit.

In case the judge finds the affidavit is sufficient and that the signatures correspond, and that the applicant is then a duly qualified elector of such precinct, and has not voted at such election, they shall open the absent or physically incapacitated voter's envelope, in such manner as not to destroy the affidavit thereon, and take out the ballot or ballots therein contained, and without unfolding the same, or permitting the same to be opened or examined, shall ascertain whether the stub or stubs is or are still attached to the ballot or ballots, and whether the number thereon corresponds to the number in the county or city or town clerk's certificate. If so, they shall endorse the same in like manner that other ballots are endorsed, shall detach the stub as in other cases, and deposit the ballot or ballots in the proper ballot-box or boxes, and make in their election records the proper entries to show such elector to have voted. In case such affidavit is found to be insufficient, or that the said signatures do not correspond, or that such applicant is not then a duly qualified elector of such precinct, such vote shall not be allowed, but, without opening the absent or physically incapacitated voter envelope, the judges of such election shall mark across the face thereof "rejected as defective" or "rejected as not an elector" as the case may be. The absent or physically incapacitated voter envelope, when such absent vote or vote by a person physically incapacitated from going to the polls is voted, and the absent or physically incapacitated voter envelope with its contents, unopened, when such absent vote or vote by a person physically incapacitated from going to the polls is rejected, shall be deposited in the ballot-box containing the general or party ballots, as the case may be, retained and preserved in the manner by law provided for the retention and preservation of official ballots voted at such election. If, upon opening the absent or physically incapacitated voter's envelope, it be found that the stub of any ballot has been detached, or that the number thereon does not correspond to the number in the county or city or town clerk's certificate of the number issued to such absent or physically incapacitated voter, the ballot shall be rejected, and it shall then and there, and without looking at the face thereof, be marked on the back "rejected on the ground of _____," filling the blank with the statement of the reason of the rejection; which statement shall be dated and signed by the majority of the judges. The ballot or ballots so rejected, together with the absent or physically incapacitated voter's envelope bearing the application, and the said application, shall be all enclosed in an envelope, which shall be then and there securely sealed, and on such envelope the judges shall write or cause to be written (if not already printed thereon) the words, "rejected ballot of absent or physically incapacitated voter" (writing in the name of the elector). "The rejected ballot or ballots is or are _____." The judges shall designate the rejected ballot as "general ballot," if it be a ballot for candidates that be rejected. If the rejected ballot be a one put on a question submitted to

the vote of the electors, the judges shall designate such ballot as ballot question No. _____ in the certificate on the envelope. There shall be a separate enclosing envelope for the ballot or ballots of each absent or physically incapacitated voter whose ballot or ballots may have been rejected and such enclosing envelope shall be placed in the envelope in which the other ballots voted or (are) required to be placed and shall not be opened without an order of a court of competent jurisdiction. The county or city or town clerk shall provide and have delivered to the judge of election suitable envelopes for enclosing rejected absent or physically incapacitated voter's ballots.

History: En. Sec. 13, Ch. 110, L. 1915; amd. Sec. 13, Ch. 155, L. 1917; re-en. Sec. 727, R. C. M. 1921; amd. Sec. 12, Ch. 234, L. 1943; amd. Sec. 10, Ch. 64, L. 1959.

Amendment

The 1959 amendment, in the second sentence of the second paragraph substituted the words "election records" for the words "election list and books."

23-1320. (734) Duty of elector if present on election day. In case any elector who shall have taken advantage of the provisions of this act, and marked his ballot as an absent or physically incapacitated voter, as in this act provided, shall not leave his county, or shall return thereto or shall have recovered physical capacity to go to the polls on or before election day, and in time to allow him to go to the polls, to-wit, to the voting place in his precinct, and to be admitted therein before the close of the polls, if shall be his duty so to go to the said voting place and to present himself to the judges of election at said voting place, and if he shall wilfully neglect so to do he shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred (\$100.00) dollars or by imprisonment not more than thirty (30) days in the county jail or by both such fine and imprisonment. If such an elector so appears the judges of election shall note in the precinct register the fact of his appearance as well as whether or not he voted in person.

History: En. Sec. 20, Ch. 110, L. 1915; re-en. Sec. 20, Ch. 155, L. 1917; re-en. Sec. 734, R. C. M. 1921; amd. Sec. 17, Ch. 234, L. 1943; amd. Sec. 11, Ch. 64, L. 1959.

Amendment

The 1959 amendment in the last sentence of this section substituted "precinct register" for "poll-books and lists."

CHAPTER 14—VOTING BY ABSENT ELECTORS IN UNITED STATES SERVICE

- Section 23-1401. Registration of absent electors in United States service.
- 23-1402. Definition of electors in United States service.
- 23-1403. The federal post card application.
- 23-1404. Oath for elector in the United States service.
- 23-1405. Classification of federal post card application.

23-1401. Registration of absent electors in United States service. Any elector of this state in the United States service who is absent from the state of Montana and the county of which he or she is a resident shall be entitled to register by mailing to the county clerk a federal post card application filled out and signed under oath, which shall be the "OFFICIAL WAR REGISTRATION CARD" of the state.

History: En. Sec. 1, Ch. 99, L. 1943;
amd. Sec. 6, Ch. 18, L. 1959.

Amendment

The 1959 amendment completely re-wrote this section. For section prior to amendment see parent volume.

23-1402. Definition of electors in United States service. The phrase "elector in United States service" as used in the Revised Codes of Montana of 1947, as amended, shall include the following:

(1) Members of the armed forces while in the active service, and their spouses and dependents.

(2) Members of the merchant marine of the United States, and their spouses and dependents.

(3) Civilian employees of the United States in all categories serving outside the territorial limits of the several states of the United States and the District of Columbia and their spouses and dependents when residing with or accompanying them, whether or not the employee is subject to the civil service laws and the Classification Act of 1949, and whether or not paid from funds appropriated by the Congress.

(4) Members of religious groups or welfare agencies assisting members of the armed forces, who are officially attached to and serving with the armed forces, and their spouses and dependents.

History: En. Sec. 2, Ch. 99, L. 1943;
amd. Sec. 7, Ch. 18, L. 1959.

Amendment

The 1959 amendment completely re-wrote this section. For text of section prior to amendment see parent volume.

23-1403. The federal post card application. The form of the federal post card application, which may be used both as an application for registration and for a ballot, shall be as follows:

(a) The cards shall be approximately nine and one-half (9½) by four and one-eighth (4⅛) inches in size.

(b) Upon one side, perpendicular to the long dimension of the card, there shall be printed in black type the following:

FILL OUT BOTH SIDES OF CARD
POST CARD APPLICATION FOR ABSENTEE BALLOT

State or Commonwealth of _____
(Fill in name of State or Commonwealth)

(1) I hereby request an absentee ballot to vote in the coming election:

(GENERAL) (PRIMARY)* (SPECIAL) ELECTION
(Strike out inapplicable words)

(2) *If a ballot is requested for a primary election, print your political party affiliation or preference in this box: ☐

(If primary election is secret in your state, do not answer).

(3) I am a citizen of the United States, eligible to vote in above state, and am:

a. A member of the armed forces of the United States ☐

b. A member of the merchant marine of the United States ☐

- c. A member of a religious or welfare organization assisting service-men ☐
- d. A civilian employed by the United States government outside the United States (continental) ☐
- e. A spouse or dependent of a person listed in (a), (b), or (c) above ☐
- f. A spouse or dependent residing with a person described in (d) above ☐

(4) I was born on _____
(Day) (Month) (Year)

(5) For _____ years preceding the above election my home (not military) residence in the above state has been _____

(Street and number or rural route, etc.)

The voting precinct or election district for this residence is _____

(Enter if known)

(6) Remarks: _____

(7) Mail my ballot to the following official address: _____

(Unit (Co., Sq., Trp., Bn., Etc.), Governmental Agency or Office)

(Military Base, Station, Camp, Fort, Ship, Airfield, etc.)

(Street, Street No., APO, or FPO No.)

(City, Postal Zone, and State)

(8) I am NOT requesting a ballot from any other state and am not voting in any other manner in this election, except by absentee process, and have not voted and do not intend to vote in this election at any other address.

(9) _____
(Signature of person requesting ballot)

(10) _____
(Full name, typed or printed, with rank or grade, and service number)

(11) Subscribed and sworn to before me on _____

(Day, month and year)

(Signature of official
administering oath)

(Typed or printed
name of official
administering oath.)

(Title or rank, service number and organization of administering official)

INSTRUCTIONS

- A. Before filling out this form see your voting officer in regard to the voting laws of your state and absentee registration and voting procedure.
- B. Type or print all entries except signatures. FILL OUT BOTH SIDES OF CARD.
- C. Address card to proper state official. Your voting officer or commanding officer will furnish you with his title and address.
- D. Mail card as soon as your state will accept your application.
- E. No postage is required for the card.
- (c) Upon the other side of the card there shall be printed in red type the following:

FILL OUT BOTH SIDES OF THE CARD

(Name)

FREE OF U. S. POSTAGE
Including Air Mail

(Unit, Gov't Agency, or Office)

(Mil. Base, Station, Ship or Office)

(Street No., APO, or FPO No.)

(City, Postal Zone, State)

OFFICIAL ELECTION BALLOTING MATERIAL—VIA AIR MAIL

To: -----

(Title of election official)

(County or township)

(City or Town, State)

History: En. Sec. 3, Ch. 99, L. 1943; **Amendment**
amd. Sec. 8, Ch. 18, L. 1959.

The 1959 amendment completely re-wrote this section. For section prior to amendment see parent volume.

23-1404. Oath for elector in the United States service. Any oath required for electors in the United States service to register, request a ballot or vote may be administered and attested, within or without the United States, by any commissioned officer in the active service of the armed forces, or any member of the merchant marine of the United States designated for this purpose by the secretary of commerce, or any civilian official empowered by state or federal law to administer oaths. No official seal

need be affixed to said oath and neither the elector nor the certifying officer need disclose his whereabouts at the time of taking said oath except to the extent required by the federal post card application.

History: En. Sec. 4, Ch. 99, L. 1943; **Amendment**

amd. Sec. 9, Ch. 18, L. 1959. The 1959 amendment completely re-wrote this section. For section prior to amendment see parent volume.

23-1405. Classification of federal post card application. Upon receipt by the county clerk of a federal post card application properly filled out and signed under oath, the county clerk shall classify such federal post card application according to the precinct in which the elector resides, and shall arrange the cards in each precinct in alphabetical order. The county clerk shall, upon receipt of any federal post card application, immediately enter upon the official register of the county in the proper precinct the full information given by said elector. Immediately upon entry upon the official register of the county of the name of the elector in the United States service the county clerk shall send to him or her by the fastest mail service available a notice that he has been registered and informing him that in order to secure a ballot he must mail at any time within forty-five (45) days next preceding the election another federal post card application to his county clerk or city clerk or town clerk.

History: En. Sec. 5, Ch. 99, L. 1943; **Amendment**

amd. Sec. 10, Ch. 18, L. 1959. The 1959 amendment completely re-wrote this section. For section prior to amendment see parent volume.

CHAPTER 16—VOTING MACHINES—CONDUCT OF ELECTION WHEN USED

Section 23-1608. City and county clerks to set up machines for use.

23-1608A. Ballot—arrangement on machine.

23-1611. Election returns.

23-1608. (764) City and county clerks to set up machines for use.

(1) The city or county clerks of each city or county in which a voting machine is to be used shall cause the proper ballots to be put upon each machine corresponding with the sample ballots herein provided for, and the machines in every way put in order, set and adjusted ready for use in voting when delivered at the precinct, and for the purpose of so labeling the machines, putting in order, setting and adjusting the same, they may employ one or more competent persons, and they shall cause the machine so labeled, in order and set and adjusted, to be delivered at the voting precinct, together with all necessary furniture and appliances that go with the same in the room where the election is to be held in the precinct, in time for the opening of the polls on election day; provided, however, that a shield of tin painted black made to conform with the shape of the keys or levers on said voting machine, shall be placed over the keys or levers not in use on the face of the ballot of the voting machine; said shields to be plainly marked with the words "not in use."

(2) In primary elections a separate row or column shall be assigned to each political party and at least one row or column shall separate the rows assigned to the two major political parties as defined in

section 23-1107, Revised Codes of Montana, 1947. In this row or column shall be placed the nonpartisan judicial ballot. In general elections the ballot on the voting machines shall be arranged and the names of the candidates for each office rotated to conform as nearly as possible to the requirements for paper ballots set forth in section 23-1107, Revised Codes of Montana, 1947. The names of the candidates of the two major parties as defined in section 23-1107, Revised Codes of Montana, 1947, shall appear in and be rotated between the first two horizontal rows or vertical columns, and the names of the candidates of minor parties and independent candidates shall appear in and be rotated between succeeding rows or columns; provided, however, that the arrangement of the ballot shall be uniform on all machines in the same precinct. The party designation of each candidate shall be printed after or below his name in type as large as the design of the machine will allow.

(3) The nonpartisan judicial ballot shall be placed in the first two horizontal or vertical rows or columns in the same position as prescribed for judicial candidates in section 23-1111, Revised Codes of Montana, 1947. [Continued on page 215.]

INITIATIVES, REFERENDUMS AND CONSTITUTIONAL AMENDMENTS	CONSTITUTIONAL AMENDMENT				
OFFICES	FOR PRESIDENTIAL ELECTORS TO VOTE FOR PRESIDENT AND VICE PRESI- DENT OF THE UNITED STATES Vote for one	UNITED STATES SENATOR Vote for one	REPRESENT- ATIVE IN CONGRESS Vote for one	GOVERNOR Vote for one	(Same for Lieutenant Governor, Secretary of State, Attorney General, State Treas- urer, State Auditor, Railroad and Public Service Commission- ers, State Superin- tendent of Public In- struction, Clerk of the Supreme Court, Chief Justice of the Supreme Court, As- sociate Justice of the Supreme Court and District Judges)
CANDIDATES	Democrat JOHN DOE for President ALBERT ORE for Vice President John Doe, Ella Moe, Jane Roe, Tom Voe	TOM COE Republican	JOHN DOE Democrat	BILL COE Republican	
CANDIDATES	Republican FRANK MOE for President HARRY COE for Vice President Jane Doe, John Moe, Tom Roe, John Voe	JACK MOE Democrat	MIKE ORE Republican	TOM ROE Democrat	
CANDIDATES		JOE ROE Socialist			
CANDIDATES					

(4) The judges shall compare the ballots on the machine with the sample ballot, see that they are correct, examine and see that all the counters, if any, in the machine are set at zero, and that the machine is otherwise in perfect order, and they shall not thereafter permit the machine to be operated or moved except by electors in voting, and they shall also see that all necessary arrangements and adjustments are made for voting irregular ballots on the machine, if such machine be so arranged.

History: En. Sec. 8, Ch. 168, L. 1907; Sec. 616, Rev. C. 1907; amd. Sec. 2, Ch. 246, L. 1921; re-en. Sec. 764, R. C. M. 1921; amd. Sec. 1, Ch. 20, L. 1959.

subds. (2) and (3); and deleted from the end of present subd. (1) a proviso for a blank row of keys between the major parties and a proviso and a sentence requiring that parties be listed on machines in the same order as on paper ballots.

Amendment

The 1959 amendment divided the section into subdivisions; inserted present

23-1608A. Ballot—arrangement on machine. The arrangement of the general election ballot on voting machines with horizontal rows shall be, as nearly as possible, in the following form:

[See double-page form below.]

FOR AGAINST		INITIATIVE NO. 1					FOR AGAINST
STATE SENATOR Vote for one		MEMBER OF THE HOUSE OF REPRESENTATIVES Vote for four					COUNTY COMMISSIONER Vote for one
JOE COE Republican		JACK BOE Democrat	PETE COE Democrat	BILL DOE Republican	FRANK HOE Democrat	JOHN DOE Democrat	
TOM DOE Democrat		ALLEN JOE Republican	OLE KOE Republican	JOHN MOE Democrat	EARL ROE Republican	MIKE ROE Republican	(Same for all County and Town- ship offices.)
		MIKE FOE Independent	JIM GOE Socialist	BILL LOE Prohibition			

The arrangement of the general election ballot on voting machines with vertical columns shall be, as nearly as possible, in the following form:

Offices	Candidates	Candidates	Candidates	Candidates	Initiatives, Referendums and Constitutional Amendments
FOR PRESIDENTIAL ELECTORS TO VOTE FOR PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES Vote for one	Democrat JOHN DOE for President ALBERT ORE for Vice-President John Doe, Ella Moe Jane Roe, Tom Voe	Republican FRANK MOE for President HARRY COE for Vice-President Jane Doe, John Moe Tom Roe, John Voe			CONSTITUTIONAL AMENDMENT
UNITED STATES SENATOR Vote for one	TOM COE Republican	JACK MOE Democrat	JOE HOE Socialist		FOR
REPRESENTATIVE IN CONGRESS Vote for one	JOE DOE Democrat	MIKE ORE Republican			AGAINST
GOVERNOR Vote for one	BILL COE Republican	TOM ROE Democrat			
(Same for Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, State Auditor, Railroad and Public Service Commissioners, State Superintendent of Public Instruction, Clerk of the Supreme Court, Chief Justice of the Supreme Court, Associate Justice of the Supreme Court and District Judges.)					
STATE SENATOR Vote for one	JOE COE Republican	TOM DOE Democrat			INITIATIVE NO. 1
MEMBER OF THE HOUSE OF REPRESENTATIVES Vote for four	JACK BOE Democrat	ALLEN JOE Republican	MIKE FOE Independent		
	PETE COE Democrat	OLE KOE Republican	JIM GOE Socialist		FOR
	BILL DOE Republican	JOE MOE Democrat	BILL LOE Prohibition		AGAINST
	FRANK HOE Democrat	EARL ROE Republican			
COUNTY COMMISSIONER Vote for one	JOHN DOE Democrat	MIKE ROE Republican			
(Same for all County and Township offices.)					

History: En. 23-1608A by Sec. 2, Ch. 20, L. 1959.

Title of Act

An act to amend section 23-1608, Revised Codes of Montana, 1947, relating to the arrangement and adjustment of voting machines; to provide that the ballot used on voting machines shall be arranged to conform as closely as possible to the arrangement of paper ballots used in precincts which do not have voting machines; to provide for the placing of the names of nonpartisan judicial candidates in a position on voting machines similar to the position occupied by non-

partisan judicial candidates upon paper ballots; and repealing section 23-2013, Revised Codes of Montana, 1947; providing for an effective date.

Repealing Clause

Section 3 of Ch. 20, Laws 1959 read "Section 23-2013, Revised Codes of Montana, 1947, is hereby repealed."

Effective Date

Section 4 of Ch. 20, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved February 10, 1959.

23-1611. (767) Election returns. (1) The judges, as soon as the count is completed and fully ascertained, shall place the machine for one (1) hour in such a position that the registering or recording compartments will be in full view of the public and any person desiring to view the number of votes cast for each person voted for at the election, must be permitted to do so. Immediately after the above said one (1) hour shall have expired the judges shall seal, close, lock the machine or remove the record so as to provide against voting or being tampered with, and in case of a machine so sealed or locked, it shall so remain for a period of at least thirty (30) days, except when used in a municipal primary nominating election, unless opened by order of a court of competent jurisdiction or the county recount board. Whenever a machine has been used in a municipal primary nominating election, it shall remain sealed and locked for a period of at least five (5) days, unless opened by order of a court of competent jurisdiction. When irregular ballots have been voted, the judges shall return them in a properly sealed package endorsed "irregular ballots," and indicating the precinct and county and file such package with the city or county clerk. It shall be preserved for six (6) months after such election and may be opened and its contents examined only upon an order of a court of competent jurisdiction or the county recount board; at the end of such six (6) months unless ordered otherwise by the court, such package and its contents shall be destroyed by the city or county clerk. All tally sheets taken from such machine, if any, shall be returned in the same manner.

(2). * * * [Same as parent volume.] ✓

History: En. Sec. 11, Ch. 168, L. 1907; Sec. 619, Rev. C. 1907; amd. Sec. 3, Ch. 246, L. 1921; re-en. Sec. 767, R. C. M. 1927; amd. Sec. 16, Ch. 42, L. 1963; amd. Sec. 1, Ch. 57, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 42 and once by Ch. 57. Neither section mentioned nor included the changes made by the other. However, since the two amendments do not appear to conflict, the compiler has made a composite section incorporating both amendments.

Amendments

Chapter 42, Laws 1963, inserted "or the county recount board" after "court of competent jurisdiction" at the end of the second sentence and in the present fifth sentence of subsection (1).

Chapter 57, Laws 1963, inserted the words "except when used in a municipal primary nominating election" in the second sentence of subsection (1); and inserted the third sentence in subsection (1).

Effective Date

Section 2 of Ch. 57, Laws 1963 provided that the act should be in effect from and after its passage and approval. Approved February 21, 1963.

CHAPTER 17--ELECTION RETURNS

- Section 23-1702. Mode of canvassing.
 23-1703. Where ballots are in excess of names on poll-books.
 23-1709. Election returns by judges—how made.
 23-1712. Filing of ballots and stubs by county clerk.
 23-1714. Disposition of returns prior to canvass of vote.
 23-1715. Clerk to file in his office books, papers, etc.

23-1702. (775) Mode of canvassing. The canvass must commence by a comparison of the poll-books from the commencement, and the cor-

rection of any mistakes that may be found therein, until they are found to agree. The judges must then take out of the box the ballots unopened except to ascertain whether each ballot is single, and count the same to determine whether the number of ballots corresponds with the number of names on the poll-books. If two or more ballots are found so folded together as to present the appearance of a single ballot, they must be laid aside until the count of the ballots is completed, and if, on comparing the count with the poll-books and further considering the appearance of such ballots, a majority of the judges are of the opinion that the ballots thus folded together were voted by one elector, they must be rejected; otherwise they must be counted.

History: Ap. p. Sec. 23, p. 380, Ban-nack Stat.; re-en. Sec. 23, p. 464, Cod. Stat. 1871; re-en. Sec. 22, p. 75, L. 1876; re-en. Sec. 546, 5th Div. Rev. Stat. 1879; re-en. Sec. 1028, 5th Div. Comp. Stat. 1887; amd. Sec. 1401, Pol. C. 1895; re-en. Sec. 573, Rev. C. 1907; re-en. Sec. 775,

R. C. M. 1921; amd. Sec. 12, Ch. 64, L. 1959. Cal. Pol. C. Sec. 1253.

Amendment

The 1959 amendment substituted the words "poll-books" for "poll-lists" each time they appear.

23-1703. (776) Where ballots are in excess of names on poll-books. If the ballots then are found to exceed in number the whole number of names on the poll-books, they must be placed in the box (after being purged in the manner above stated), and one of the judges must, publicly, and without looking in the box, draw therefrom singly and destroy unopened so many ballots as are equal to such excess. And the judges must make a record on the poll-books of the number of ballots so destroyed.

History: Ap. p. Sec. 24, p. 380, Ban-nack Stat.; re-en. Sec. 24, p. 464, Cod. Stat. 1871; re-en. Sec. 23, p. 76, L. 1876; re-en. Sec. 537, 5th Div. Rev. Stat. 1879; re-en. Sec. 1029, 5th Div. Comp. Stat. 1887; amd. Sec. 1402, Pol. C. 1895; re-en. Sec. 574, Rev. C. 1907; re-en. Sec. 776,

R. C. M. 1921; amd. Sec. 13, Ch. 64, L. 1959. Cal. Pol. C. Sec. 1255.

Amendment

The 1959 amendment substituted the words "poll-books" for the words "poll-lists" each time they appear.

23-1709. (782) Election returns by judges—how made. The judges must, before they adjourn, inclose in a strong envelope, securely sealed and directed to the county clerk, the precinct registers, all certificates of registration received by them, the lists of persons challenged, both of the poll-books, both of the tally-sheets, and the official oaths taken by the judges and clerks of election; and must inclose in a separate package or envelope, securely sealed and directed to the county clerk, all unused ballots with the numbered stubs attached; and must also inclose in a separate package or envelope, securely sealed and directed to the county clerk, all ballots voted, including all voted ballots which, for any reason, were not counted or allowed, and all detached stubs from ballots voted, and endorse on the outside thereof "ballots voted." Each of the judges must write his name across the seal of each of said envelopes or packages. The ballot box must be returned to the county clerk.

History: Ap. p. Sec. 1408, Pol. C. 1895; amd. Sec. 6, Ch. 88, L. 1907; Sec. 580, Rev. C. 1907; re-en. Sec. 782, R. C. M. 1921; amd. Sec. 1, Ch. 112, L. 1937; amd. Sec. 1, Ch. 65, L. 1943; amd. Sec. 1, Ch. 23, L. 1945; amd. Sec. 14, Ch. 64, L. 1959.

Amendment

The 1959 amendment substituted "precinct registers" for the words "check-lists" in this section.

23-1712. (786) **Filing of ballots and stubs by county clerk.** Upon the receipt of the packages^{single} or envelopes by the county clerk, he must file the package or envelope containing the ballots voted and detached stubs and the package or envelope containing the unused ballots, and must keep them unopened and unaltered for twelve (12) months, after which time, if there is no contest commenced in some tribunal having jurisdiction about such election or a recount is had as provided by law, he must burn such packages, or envelopes, without opening or examining their contents.

History: Ap. p. Sec. 1412, Pol. C. 1895; amd. Sec. 8, Ch. 88, L. 1907; Sec. 584, Rev. C. 1907; re-en. Sec. 786, R. C. M. 1921; amd. Sec. 3, Ch. 23, L. 1945; amd. Sec. 17, Ch. 42, L. 1963. Cal. Pol. C. Sec. 1265.

Amendment

The 1963 amendment inserted the words "or a recount is had as provided by law" after "jurisdiction about such election" near the end of the section.

23-1714. (788) **Disposition of returns prior to canvass of vote.** The envelopes containing the precinct registers, certificates of registration, poll-books, tally-sheets, and oaths of election officers must be filed by the county clerk and be kept by him, unopened and unaltered, until the board of county commissioners meet for the purpose of canvassing the returns, when he must produce them before such board, where the same shall be opened.

History: Ap. p. Sec. 1414, Pol. C. 1895; amd. Sec. 10, Ch. 88, L. 1907; Sec. 586, Rev. C. 1907; re-en. Sec. 788, R. C. M. 1921; amd. Sec. 15, Ch. 64, L. 1959.

Amendment

The 1959 amendment substituted the words "precinct registers" for the words "check-lists" and made the word poll-book plural.

23-1715. (789) **Clerk to file in his office books, papers, etc.** As soon as the returns are canvassed, the clerk must file in his office the poll-books, election records and the papers produced before the board from the package mentioned in the next preceding section.

History: En. Sec. 1415, Pol. C. 1895; re-en. Sec. 587, Rev. C. 1907; re-en. Sec. 789, R. C. M. 1921; amd. Sec. 16, Ch. 64, L. 1959. Cal. Pol. C. Sec. 1268.

Amendment

The 1959 amendment substituted the words "poll-books, election records" for the words "poll-book, lists."

CHAPTER 18—CANVASS OF ELECTION RETURNS— RESULTS AND CERTIFICATES

- Section 23-1807. Duty of canvassing board.
 23-1808. Certificates issued by the clerk.
 23-1813. How transmitted.
 23-1815. Messenger may be sent for returns—his duty and compensation.

23-1807. (796) **Duty of canvassing board.** The board must declare elected the person having the highest number of votes given for each office to be filled by the votes of a single county or a subdivision thereof. If a recount shall show that two or more persons received an equal and sufficient number of votes to elect to the office of state senator, or member of the house of representatives, the county recount board shall certify such facts to the governor.

History: En. Sec. 6, p. 302, L. 1891; re-en. Sec. 1435, Pol. C. 1895; re-en. Sec. 593, Rev. C. 1907; amd. Sec. 1, Ch. 84, L. 1909; re-en. Sec. 796, R. C. M. 1921; amd. Sec. 18, Ch. 42, L. 1963.

Amendment

The 1963 amendment deleted from the end of the first sentence a clause reading, "and in the event of two or more persons receiving an equal and sufficient number of votes to elect to the office of state

senator, or member of the house of representatives, it shall be the duty of the board, under the direction of and in the presence of the district court, or judge thereof, to recount the ballots cast for such persons, and the board shall declare elected the person or persons shown by the recount to have the highest number of votes"; substituted "a recount" for "such recount" at the beginning of the second sentence; and made minor changes in phraseology.

23-1808. (797) Certificates issued by the clerk. The clerk of the board of county commissioners must immediately make out and deliver to such persons (except to the person elected district judge) a certificate of election signed by him and authenticated with the seal of the board of county commissioners, and said certificate shall contain therein written notice that the official bond of the elected or appointed official must be filed within thirty (30) days after notice of election or appointment, and that failure to file such bond shall cause the office to become vacant.

History: En. Sec. 7, p. 302, L. 1891; re-en. Sec. 1436, Pol. C. 1895; re-en. Sec. 594, Rev. C. 1907; re-en. Sec. 797, R. C. M. 1921; amd. Sec. 1, Ch. 50, L. 1959. Cal. Pol. C. Sec. 1284.

Amendment

The 1959 amendment added the portion of this section beginning with the words "and said certificate."

23-1813. (802) How transmitted. The clerk must seal up such abstract, endorse it "Election Returns," and without delay transmit it to the secretary of state by certified mail.

History: En. Sec. 11, p. 303, L. 1891; re-en. Sec. 1441, Pol. C. 1895; re-en. Sec. 599, Rev. C. 1907; re-en. Sec. 802, R. C. M. 1921; amd. Sec. 1, Ch. 87, L. 1959. Cal. Pol. C. Sec. 1289.

Repealing Clause

Section 2 of Ch. 87, Laws 1959 repealed all acts or parts of acts in conflict therewith.

Amendment

The 1959 amendment substituted "by certified mail" for "by mail, registered."

23-1815. (804) Messenger may be sent for returns—his duty and compensation. If the returns from all the counties have not been received on the fifth day before the day designated for the meeting of the board of state canvassers, the secretary of state must forthwith send a messenger to the clerk of the board of county canvassers of the delinquent county, and such clerk must furnish the messenger with a certified copy of the statement mentioned in section 23-1805. The person appointed is entitled to receive as compensation five dollars per day for the time necessarily consumed in such service, and the traveling expenses necessarily incurred. His account therefor, certified by the secretary of state, must be paid out of the general fund of the state treasury.

History: Ap. p. Secs. 12 and 13, L. 1891; amd. Sec. 1443, Pol. C. 1895; re-en. Sec. 601, Rev. C. 1907; re-en. Sec. 804, R. C. M. 1921; amd. Sec. 16, Ch. 97, L. 1961.

Amendment

The 1961 amendment deleted the words "after being allowed by the board of examiners" which appeared after "secretary of state" in the last sentence.

CHAPTER 20—NONPARTISAN NOMINATION AND ELECTION OF JUDGES OF SUPREME COURT AND DISTRICT COURTS

- Section 23-2001. Nomination and election of district court and supreme court judges.
 23-2003. Petition for nomination—contents—form—filing—fees.
 23-2005. Arrangement and certification of judicial candidates—separate from party designation.

23-2001. (812.1) Nomination and election of district court and supreme court judges. That hereafter all candidates for the office of justice of the supreme court of the state of Montana or judge of the district court in any judicial district of the state of Montana, shall be nominated and elected in accordance with the provisions of this act and in no other manner.

Each vacancy for associate justice of the supreme court is to be considered as a separate and independent office for election purposes, and to facilitate the nomination and election of candidates thereto, the chief justice of the supreme court shall assign an individual number to the four (4) associate justices and certify these numbers to the office of the secretary of state not less than one hundred eighty (180) days before the date of the primary nominating election.

Each department in a judicial district which has more than one (1) judge of the district court is to be considered as a separate and independent office for election purposes.

History: En. Sec. 1, Ch. 182, L. 1935;
 amd. Sec. 2, Ch. 229, L. 1961.

Amendment

The 1961 amendment added the second and third paragraphs.

Compiler's Note

Section 1, Ch. 229, Laws 1961, amended sec. 93-321.

23-2003. (812.3) Petition for nomination — contents — form — filing—fees. All persons who shall desire to become candidates for nomination to any office within the provisions of this act shall prepare, sign and file petitions for nomination in compliance with the requirements of the primary election laws, which petition for nomination shall be substantially in the following form: To _____ (Name and title of officer with whom the petition is to be filed), and to the electors of the _____ (state or counties of _____ comprising the district or county as the case may be) in the state of Montana:

I, _____, reside at _____, and my postoffice address is _____. I am a candidate on the nonpartisan judicial ticket for the nomination for the office of _____ at the primary nominating election to be held in the _____ (state of Montana or district or county), on the _____ day of _____, 19____, and if I am nominated as a candidate for such office I will accept the nomination and will not withdraw, and if I am elected, I will qualify as such officer.

Each person filing a petition for nomination to the office of associate justice of the supreme court shall, in the blank wherein he indicates the office for which the petition for nomination is being filed, designate the number of the associate justice whose office he is seeking. Each person filing a petition can make only one (1) such designation.

All persons who shall desire to become candidates for nomination as judge of the district court in any district having more than one (1) judge shall specify in said petition for nomination the number of the department to which they seek nomination and election, and their candidacy shall be limited solely to the numbered department so specified, it being intended hereby that the office of judge of each respective numbered department shall be filled in all respects as though each of said numbered departments were an entirely separate and independent elective office.

Provided, however, that no such petition for judicial office shall indicate the political party or political affiliations of the candidate, and provided further that no candidate for judicial office may in his petition for nomination state any measures or principles he advocates, or have any statement of measure or principles which he advocates, or any slogans, after his name on the nominating ballot as permitted by section 23-911.

Each person so filing a petition for nomination shall pay or remit therewith the fee prescribed by law for the filing of such a petition for the particular judicial position for which he aspires for nomination. All such petitions for justices of the supreme court and judges of the several district courts of the state shall be filed with the secretary of state.

History: En. Sec. 3, Ch. 182, L. 1935;
amd. Sec. 3, Ch. 229, L. 1961.

Amendment

The 1961 amendment inserted two new paragraphs immediately after the petition form.

23-2005. (812.5) Arrangement and certification of judicial candidates—separate from party designation. At the same time and in the same manner as by law he is required to arrange and certify the names of candidates for other state offices the secretary of state shall separately arrange and certify and file as required by law, the names of all candidates for judicial office, certifying to each county clerk of the state the names of all candidates for judicial office entitled to appear on the primary ballot in his county, with all other information required by law to appear upon the ballot, which certificate shall separately state the names of candidates for each respective numbered associate justice and department in districts having more than one (1) judge, and which lists of judicial candidates shall be made upon separate sheets of paper from the lists of candidates to appear under party or political headings.

History: En. Sec. 5, Ch. 182, L. 1935;
amd. Sec. 4, Ch. 229, L. 1961.

Amendment

The 1961 amendment after the words "to appear upon the ballot" inserted "which certificate shall separately state the names of candidates for each respective numbered associate justice and department in districts having more than one (1) judge, and."

Repealing Clause

Section 5 of Ch. 229, Laws 1961, read as follows: "All acts and parts of acts in conflict herewith are hereby repealed, and all laws of the state of Montana pertaining to elections, both primary and general, not in conflict herewith are hereby declared applicable to the nomination and election of the judicial officers herein referred to."

23-2013. (812.14) Repealed.

Repeal

This section (Sec. 14, Ch. 182, L. 1935), relating to the arrangement of the judi-

cial ballot when voting machines are used, was repealed by Sec. 3, Ch. 20, Laws 1959, effective February 10, 1959.

CHAPTER 23—RECOUNT OF BALLOTS—RESULTS

- Section 23-2309. Purpose of act—liberal construction.
 23-2310. Application of act.
 23-2311. Close vote as ground for recount—petition filed with clerk of court or secretary of state.
 23-2312. Tie vote as ground for recount.
 23-2313. Total vote—manner of computation.
 23-2314. County recount board—composition—disqualification of interested candidates.
 23-2315. Clerk of county recount board.
 23-2316. Notice to recount board of filing of petition—convening of board.
 23-2317. Persons entitled to appear at recount—opening and recount of ballots.
 23-2318. Certification of recount results—transmittal to secretary of state—corrected abstract of votes—new certificate of election or nomination.
 23-2319. Re-convening state board of canvassers—re-canvass by state board—corrected abstract of votes—new certificate of election or nomination.
 23-2320. Effect of new certificate of election or nomination.
 23-2321. Tie vote after recount.
 23-2322. Expenses of recount.
 23-2323. Supplemental to prior law.

23-2301. (828.1) Recount of votes, order for—application, etc.

Cross-Reference

Application of Montana Rules of Civil

Procedure to recount proceedings, see Table A, M. R. Civ. P. (sec. 93-2711-7).

23-2309. Purpose of act—liberal construction. It is the purpose of this act to procure a speedy and correct determination of the true and actual count of all ballots cast at an election, which ballots are valid on their face, and all provisions of this act shall be liberally construed to that end.

History: En. Sec. 1, Ch. 42, L. 1963.

Title of Act

An act providing for a recount of votes in elections; declaring the method of determining when a recount may be requested; specifying the duties of the sec-

retary of state and the county clerks: establishing county recount boards; providing the method of recount; providing for the expense of a recount; and amending sections 23-1611, 23-1712, and 23-1807, R.C.M. 1947.

23-2310. Application of act. The provisions herein shall apply to the recount of ballots cast in any election.

History: En. Sec. 2, Ch. 42, L. 1963.

23-2311. Close vote as ground for recount—petition filed with clerk of court or secretary of state. A recount shall be made under any of the following conditions:

1. When any candidate for any office, position, or nomination which is voted upon only by the electors of one county, or some part thereof, except the office of judge of the district court, is defeated according to the official returns by a margin not exceeding one-fourth of one percent ($\frac{1}{4}$ of 1%) of the total vote cast for all candidates for such office, position, or nomination, or is defeated by a margin not exceeding ten (10) votes, whichever is the greater, he may within five (5) days after completion of the official canvass of the returns file with the county clerk his duly verified petition stating he believes a recount will change the result and

praying for a recount of all votes cast for such office, position, or nomination.

2. Whenever any candidate for any office, position, or nomination which is voted upon in more than one county or for the office of judge of the district court, is defeated according to the official returns by a margin not exceeding one-fourth of one percent ($\frac{1}{4}$ of 1%) of the total vote cast for all candidates for such office, position, or nomination, he may within five (5) days after completion of the official canvass of the returns file a petition with the secretary of state such as set forth in subdivision one (1) of this section. The secretary of state shall immediately notify by registered mail each county clerk whose county includes any precincts which voted for such office, position, or nomination of the filing of such petition, and the recount shall be conducted as to all of such precincts in each such county.

3. Whenever any referred or submitted question is voted upon throughout the state and is determined according to the official canvass by a margin of not exceeding one-fourth of one percent ($\frac{1}{4}$ of 1%) of the total vote cast for and against on such question, there may be filed with the secretary of state within five (5) days after the completion of the official canvass, a petition signed by not less than one hundred (100) legally qualified electors of the state, and representing at least five (5) counties of the state, a petition with the secretary of state such as set forth in subdivision one (1) of this section. The secretary of state shall immediately notify by registered mail each county clerk of the filing of such petition, and the recount shall be conducted as to all precincts in each county.

History: En. Sec. 3, Ch. 42, L. 1963.

23-2312. Tie vote as ground for recount. When by reason of a tie vote found to exist upon the canvass of the original official returns, it is impossible to declare who has been elected or nominated to an office or position, it shall be the duty of the canvass board making such canvass to certify said vote to the county clerk where the election involved is confined to one county, except for the office of district judge, and to the secretary of state as to all other elections. The county clerk, or the secretary of state, as the case may be, shall proceed exactly as if a petition had been duly filed under this act, and the recount shall proceed accordingly. In case of a tie vote found to exist after the recount, such tie vote shall be resolved as provided by existing statutes.

History: En. Sec. 4, Ch. 42, L. 1963.

23-2313. Total vote—manner of computation. When in any election an elector may vote for two or more candidates for the same office, the total vote cast for all candidates for such office shall for the purposes of this act be the total vote actually cast for all candidates divided by the number of candidates officially declared nominated or elected as shown by the official returns.

History: En. Sec. 5, Ch. 42, L. 1963.

23-2314. County recount board—composition—disqualification of interested candidates. The county recount board of each county shall con-

sist of the three members of the board of county commissioners. If at the time and place appointed for the recount one or more of the county commissioners should not attend, the place of the absentees must be supplied by one or more of the following county officers, whose duty it is to act in the order named: the treasurer, the assessor, the sheriff, the clerk of court. The county recount board shall always consist of three acting members. If any member of the county recount board was among the candidates for an office, nomination, or position to which votes are to be recounted, he shall thereby be disqualified.

History: En. Sec. 6, Ch. 42, L. 1963.

23-2315. **Clerk of county recount board.** The county clerk shall be the clerk of the county recount board, and the board may hire additional clerks as needed.

History: En. Sec. 7, Ch. 42, L. 1963.

23-2316. **Notice to recount board of filing of petition—convening of board.** The county clerk shall immediately upon the filing with him of any petition for a recount, or upon receipt from the secretary of state of notice of such filing with the secretary of state, notify the members of the county recount board. The board shall then convene at the usual place of meeting of the county commissioners without undue delay, and in no event more than five (5) days after the filing of the petition with the county clerk or the notice of the filing with the secretary of state.

History: En. Sec. 8, Ch. 42, L. 1963.

23-2317. **Persons entitled to appear at recount—opening and recount of ballots.** Each candidate for any office, nomination, or position involved in a recount may appear, personally or by a representative, and shall have full opportunity to witness the opening of all ballot boxes and the count of all ballots. If the recount is upon a referred or submitted question, one legally qualified elector of the state favoring each side as to such question may be present and represent such side. The county clerk shall produce, unopened, the sealed package or envelope received by him from the judges of election of each election precinct in the county. The procedure for conducting the recount of votes shall be as provided in subsection three (3) of section 23-2304, R.C.M. 1947, and the recount shall proceed as expeditiously as reasonably possible until completed.

History: En. Sec. 9, Ch. 42, L. 1963.

23-2318. **Certification of recount results—transmittal to secretary of state—corrected abstract of votes—new certificate of election or nomination.** Immediately upon conclusion of the recount of all ballots to be recounted the county recount board shall certify the result. The certificate must be signed by at least two members of such board, attested under seal by the county clerk. The certificate shall set forth in substance the proceedings of the board and appearance of any candidates or representatives, shall adequately designate each precinct recounted, the vote of such precinct according to the official canvass thereof previously made as to the office, nomination, position, or question involved, and the

correct vote of such precinct as determined by the board through the recount. When the certificate relates to the recount ballots as to an office, nomination, position, or question voted upon in more than one county or for the office of judge of the district court, the certificate shall be made in duplicate, and either the original or duplicate original immediately transmitted to the secretary of state by registered mail. If the recount relates to the recount of ballots as to an office, nomination, position, or question voted upon in only one county, or some part thereof, the county recount board shall immediately re-canvass the returns as corrected by the certificate showing the result of the recount, and make a new and corrected abstract of the votes cast. If such correct abstract shows no change in the result as previously found on the official returns, no further action shall be taken. If there is a change in the result, a new certificate of election or nomination shall be issued to each candidate found to have been elected or nominated.

History: En. Sec. 10, Ch. 42, L. 1963.

23-2319. Re-convening state board of canvassers—re-canvass by state board—corrected abstract of votes—new certificate of election or nomination. Upon receipt by the secretary of state of certificates by all county recount boards required to be forwarded, the secretary of state shall file the same, and fix a time and place as early as reasonably possible for re-convening the state board of canvassers, and shall notify the members of the state board of canvassers thereof. The state board of canvassers shall re-convene at the time and place designated and re-canvass the official returns as to such office, nomination, position or question, as corrected by such certificates, and shall make a new and corrected abstract of the votes cast. If such corrected abstract shows no change in the result previously found on the official returns, no further action shall be taken. If there is a change in the result, a new certificate of election or nomination shall be issued in the same manner as the certificate of election or nomination previously issued to each candidate found to have been elected or nominated.

History: En. Sec. 11, Ch. 42, L. 1963.

23-2320. Effect of new certificate of election or nomination. Any certificate of nomination or election issued under the provisions of this act shall have the effect of and shall be recognized as superseding and rendering null and void any certificate of election or nomination previously issued which is inconsistent with the new certificate, and the holder of any certificate of nomination or election issued under this act shall have the same identical rights as if he held the original certificate of nomination or election and no recount had been had.

History: En. Sec. 12, Ch. 42, L. 1963.

23-2321. Tie vote after recount. When a tie vote between candidates is found to exist on the basis of the recount, and by reason of such tie vote it cannot be determined who has been nominated or elected, the office or

position shall be filled as provided by section[s] 23-1901 to 23-1904, R.C.M. 1947.

History: En. Sec. 13, Ch. 42, L. 1963.

23-2322. Expenses of recount. The expense of the recount of the votes as provided in this act shall be a county charge, except that any expenses of the secretary of state, and state board of canvassers shall be a state charge.

History: En. Sec. 14, Ch. 42, L. 1963.

23-2323. Supplemental to prior law. This act is supplemental to and not in derogation of the law relating to contest of elections, or the recount procedure set forth in sections 23-2301 to 23-2308, R.C.M. 1947.

History: En. Sec. 15, Ch. 42, L. 1963.

TITLE 25—FEES AND SALARIES

- Chapter 1. Fees of state officers, 25-102, 25-110.
2. Fees of county officers, 25-226, 25-231.
3. Fees and salaries of justices of the peace and constables, 25-301, 25-303, 25-306, 25-309.
4. Jurors' and witnesses' fees, 25-401, 25-404.
5. Salaries of state officers, deputies and employees, 25-501, 25-501.1, 25-508.
6. Salaries of county officers, deputies and employees, 25-605, 25-609.

CHAPTER 1—FEES OF STATE OFFICERS

- Section 25-102. Fees of secretary of state.
25-110. Water users' association exempt from payment of fees.

25-101. (4912) Repealed.

Repeal

This section (Sec. 4630, Pol. C. 1895; Sec. 3163, Rev. C. 1907; Sec. 4912, R. C. M. 1921), relating to the fees of secretary

of state and state auditor principally on insurance matters, was repealed by Sec. 673, Ch. 286, Laws 1959, effective January 1, 1961.

25-102. (145) Fees of secretary of state. The secretary of state, for services performed in his office, must charge and collect the following fees:

1. For each copy of any law, resolution or record or other document or paper on file in his office, forty cents per folio, or, if the copy is made by any process of reproduction by photographic, photostatic or similar process, the fee shall be seventy-five cents per page or fraction thereof.

2. For affixing certificate and seal, two dollars, except that certificates of good standing and certificates of the secretary of state relative to the corporate character and capacity of a corporation pursuant to section 15-117 shall be five dollars each.

3. For issuing each certificate of incorporation and each certificate of increase of capital stock, three dollars.

4. For recording and filing each certificate of incorporation and each certificate of increase of capital stock, the following amounts shall be charged:

Amounts up to one hundred thousand dollars, one dollar per thousand dollars.

Additional from one hundred thousand dollars, to two hundred and fifty thousand dollars, eighty cents per thousand dollars.

Additional from two hundred and fifty thousand dollars to five hundred thousand dollars, sixty cents per thousand dollars.

Additional from five hundred thousand dollars to one million dollars, forty cents per thousand dollars.

Additional over one million dollars, twenty cents per thousand dollars.

Providing, that no fee for filing any articles of incorporation or increase of capital stock shall be less than fifty dollars except those enumerated in the next subdivision, which do not have capital stock and are not organized for the purpose of profit.

Fees for an increase of capital stock shall be computed on the amount of increase at the same rate as for original incorporation for the amount of the increase.

5. For all services in connection with the issuance of certificate, filing and recording of each of the following, whether foreign or domestic, forty dollars, plus two dollars for certifying a copy of the articles so filed, when required for filing in the office of the county clerk: religious societies, churches, organizations for religious purposes, hospitals, lyceums, musical and scientific societies, libraries, benevolent and fraternal societies, social clubs, agricultural societies, stock growers' associations, grazing associations and other associations of like character, including local, independent and subordinate organizations, as well as state, supervisory, governing and grand organizations, and bodies of any such associations, societies or orders, or for the purpose of establishing public or private charities, or both. Provided, however, that the above enumerated organizations do not have capital stock and are not organized for the purpose of profit.

6. For issuing each certificate of decrease of capital stock, twenty dollars.

7. For recording and filing each certificate of decrease of capital stock, ten dollars.

8. For issuing each certificate of continuance of corporate existence, ten dollars.

9. For recording and filing each certificate of continuance of corporate existence, the following amounts shall be charged:

Amounts up to one hundred thousand dollars, fifty cents per thousand dollars.

Additional from one hundred thousand dollars to two hundred and fifty thousand dollars, forty cents per thousand dollars.

Additional from two hundred and fifty thousand dollars to five hundred thousand dollars, thirty cents per thousand dollars.

Additional from five hundred thousand dollars to one million dollars, twenty cents per thousand dollars.

Additional over one million dollars, ten cents per thousand dollars.

Providing, that no fee for filing any certificate of continuance of corporate existence shall be less than twenty-five dollars, except that corporations enumerated in subdivision five of this section shall pay only for the certificate of continuance provided in subdivision eight of this section, when extending their corporate existence for a term of years, or changing their corporate existence from a term of years, or continual or perpetual succession to perpetual existence.

10. For recording and filing each notice of removal of place of business, each certificate of change of name, or each certificate making capital stock assessable, ten dollars, and for issuing a certificate thereon, five dollars.

11. For filing each notice of appointment of agent, amendment to articles of incorporation, change of agent, change of principle [principal] place of business, or notice of withdrawal of a foreign corporation, five dollars.

12. For filing each annual statement or report of any foreign corporation, five dollars.

13. For receiving and recording each official bond, ten dollars.

14. For each commission or other document, signed by the governor, and attested by the secretary of state (pardon and military commissions excepted), five dollars.

15. For filing the annual report required under section 15-811 by domestic corporations, three dollars.

16. For filing each trade mark, five dollars; for filing and recording each assignment of a trade mark, five dollars; and for issuing each certificate of record, five dollars.

17. For filing and recording miscellaneous papers, records, or other documents, five dollars.

18. For filing and recording any other paper not otherwise herein provided for, five dollars. When a copy of any law, resolution or record or other document or paper on file in the office of the secretary of state is presented for comparison and certification, ten cents per folio must be charged and collected for proofreading the same. That no member of the legislative assembly, or state or county officer, can be charged for any search relative to matters appertaining to the duties of his office; nor must he be charged any fee for a certified copy of any law or resolution passed by the legislative assembly relative to his official duties. Fees must be collected in advance, and when collected by the secretary of state, must be paid to the state treasurer at the end of each quarter, as provided in the constitution.

19. For filing and recording a certificate or decree of dissolution, five dollars.

History: Ap. p. Sec. 410, Pol. C. 1895; amd. Sec. 1, p. 47, L. 1899; amd. Sec. 1, Ch. 127, L. 1903; amd. Sec. 1, Ch. 74, L. 1905; re-en. Sec. 165, Rev. C. 1907; amd. Sec. 1, Ch. 91, L. 1921; re-en. Sec. 145, R. C. M. 1921; amd. Sec. 1, Ch. 50, L. 1935; amd. Sec. 1, Ch. 116, L. 1961. Cal. Pol. C. Sec. 416.

Compiler's Note

The compiler inserted the bracketed word "principal" in subd. 11.

Amendment

The 1961 amendment increased the basic fee in subd. 1 from 20¢ to 40¢ per folio; added to subd. 1 the clause relating to photographic reproductions; increased the basic fee in subd. 2 from \$1.00 to \$2.00; added to subd. 2 the clause relating to certificates as to corporate status; added the last paragraph to subd. 4; increased the basic fee in subd. 5 from \$20 to \$40; inserted in subd. 5 the words "plus two dollars for certifying a copy of the articles so filed, when required for filing in the office of the county clerk"; increased the fee in subd. 6 from \$10 to \$20; increased the fee in subd. 7 from \$5.00 to \$10; added the proviso to subd. 9; increased the basic

fee in subd. 10 from \$5.00 to \$10; added to subd. 10 the words "and for issuing a certificate thereon, five dollars"; inserted in subd. 11 the words "amendment to articles of incorporation, change of agent, change of principle place of business, or notice of withdrawal of a foreign corporation"; substituted "annual statement or report" in subd. 12 for "annual or semi-annual statement"; increased the fee in subd. 13 from \$5.00 to \$10; substituted a new subd. 15 for one reading "15. For searching the records and archives of the state, one dollar"; inserted in subd. 16 the words "for filing and recording each assignment of a trade mark, five dollars"; increased the fee specified in the last clause of subd. 16 from \$1.00 to \$5.00; inserted "filing and" near the beginning of subd. 17; increased the fee in subd. 17 from \$1.00 to \$5.00; deleted from the end of subd. 17 the words "for recording, twenty cents per folio; inserted "and recording" near the beginning of subd. 18; substituted "five dollars" for "one dollar for filing and twenty cents for folio for recording" at the end of the first clause in subd. 18; increased the comparison and proofreading fee specified in subd. 18 from 5¢ to 10¢ per folio; and added subd. 19.

25-110. (147) Water users' association exempt from payment of fees. Any water users' association, organized in conformity with the require-

ments of the laws of the United States and of the state of Montana, under the reclamation act of June 17, 1902, which, under the articles of incorporation, is authorized to furnish water only to its stockholders, shall be exempt from the payment of any incorporation tax and from the payment of any annual franchise tax, and upon filing its articles of incorporation with the secretary of state, shall be required to pay only a fee of forty dollars (\$40.00) for the filing and recording of such articles of incorporation, and the issuance of certificate of incorporation.

History: En. Sec. 1, Ch. 66, L. 1905; re-en. Sec. 167, Rev. C. 1907; re-en. Sec. 147, R. C. M. 1921; amd. Sec. 9, Ch. 117, L. 1961.

Amendment

The 1961 amendment changed the filing fee from ten dollars to forty dollars.

CHAPTER 2—FEES OF COUNTY OFFICERS

Section 25-226. Fees of sheriff.

25-231. Fees of county clerks.

25-201. (4864) Disposal of fees collected by county officers.

References

Cited or applied in State v. Hale, 129 M 449, 291 P 2d 229, 234.

25-203. (4887) Fees must be paid into county treasury, when.

References

Cited or applied in State v. Hale, 129 M 449, 291 P 2d 229, 235.

25-226. (4916) Fees of sheriff.

(1) and (2). * * * [Subdivisions (1) and (2), same as parent volume.]

(3) In addition to the fees above specified, the sheriff shall receive for each mile actually traveled, in serving any writ, process, order or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to jail, only his actual expenses when such travel is made by railroad, and when travel is other than by railroad, he shall receive eleven cents (11¢) per mile for each mile actually traveled by him both going and returning, and the actual expenses incurred by him in conveying a person under arrest before a magistrate or to jail, and he shall receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county, the same to be in full payment for transporting and dieting such persons during such transportation; provided that where more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one mileage shall be charged.

(4). * * * [Same as parent volume.]

History: En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R. C. M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd.

Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957.

Compiler's Note

Section 1 of Ch. 82, Laws 1957 amended section 16-2723.

Amendment

The 1957 amendment in subd. (3) increased the rate received per mile from nine cents to eleven cents.

Repealing Clause

Section 3 of Ch. 82, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 82, Laws 1957 provided the act should be in effect from and

after its passage and approval. Approved March 2, 1957.

Agreement for Extra Fees

There is no rule in Montana that bars an attaching creditor from entering into a private agreement with the sheriff to pay such sheriff out of the attaching creditor's own pocket additional compensation over and above that contemplated by the statute. *Bucher v. Fraser*, 138 M 83, 354 P 2d 1042, 1047.

25-227. (4886) Fees for board of prisoners.**In General**

An information which charges that defendants presented for allowance to the board of county commissioners a "certain false and fraudulent monthly report concerning board furnished Missoula County prisoners" is insufficient to state an of-

fense unless accompanied by a statement of facts upon which the charges of falsehood or fraud rest. *State v. MacLean*, 129 M 500, 291 P 2d 250, 252. (Concurring and dissenting opinion, 129 M 500, 291 P 2d 250, 252.)

25-229. (4910) Sheriff falsely representing his expenses, etc.**Information**

Information which charges that defendants presented for allowance to the board of county commissioners a certain false and fraudulent monthly report concerning board furnished Missoula County prisoners is insufficient to state an offense

unless accompanied by a statement of facts upon which the charges of falsehood or fraud rest. *State v. MacLean*, 129 M 500, 291 P 2d 250, 252. (Concurring and dissenting opinion, 129 M 500, 291 P 2d 250, 252.)

25-231. (4917) Fees of county clerks. The fees of county clerks, which must be charged and collected for the use of their respective counties, are as follows:

For recording and indexing each instrument of writing allowed by law to be recorded; except as hereinafter provided;

For first folio, sixty cents (60¢) and for each subsequent folio or fraction thereof, thirty cents (30¢);

For each entry in index, twenty cents (20¢);

For certificate that such instrument has been recorded with seal affixed, one dollar (\$1.00);

For recording and indexing each real estate mortgage, assignment, renewal, or release of real estate mortgage;

For each folio, forty cents (40¢);

For each entry in index, twenty cents (20¢);

For certificate that such mortgage, assignment or release has been recorded with seal affixed, one dollar (\$1.00);

For recording and indexing each certificate of location of quartz or placer mining claim, millsite claim, or notice of appropriation of water, including certificate that such instrument has been recorded with seal affixed, four dollars (\$4.00);

For recording and indexing each affidavit of annual labor on mining claim, including certificate that such instrument has been recorded with seal affixed, two dollars (\$2.00) for the first mining claim in said affidavit, and fifty cents (50¢) for each additional mining claim described and included therein;

For filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, one dollar (\$1.00);

For filing and indexing each certificate of incorporation or annual statement of any corporation, two dollars (\$2.00);

For recording and platting each town site or map;

For each lot up to and including one hundred, fifty cents (50¢);

For each additional lot in excess of one hundred, ten cents (10¢);

For recording the field notes of survey of any town site, per folio, fifty cents (50¢).

Provided that in all cases where recording is done by photographic or similar process the fee to be charged by the county clerk and recorder for filing and indexing the same shall be two dollars (\$2.00) for each page or fraction thereof of said instrument.

For a copy of any record or paper, for each folio, thirty cents (30¢) and for each certification with seal affixed, one dollar (\$1.00); provided, that in all cases where copies of any record or paper are to be certified by the county clerk and such copy is furnished to said clerk for certification, said clerk shall not make a charge nor receive a fee for the comparison of such copy, other than the fee of one dollar (\$1.00) for his certificate and seal.

For searching any index record of files of the office, for each year when required, in abstracting or otherwise, thirty cents (30¢);

For each entry of discharge or satisfaction of mortgage, lien, or other instrument on the margin of record thereof, or upon the original instrument, and noting same in the indexes concerned, fifty cents (50¢);

For administering an oath with certificate and seal he shall make no charge;

For taking and certifying an acknowledgment, with seal affixed, for signature thereto he shall make no charge;

For recording and indexing any instrument which may be recorded pursuant to the provisions of section 73-104, Revised Codes of Montana, 1947, and which pertains to land allotted to an Indian or land within an Indian Reservation, except fee patents, he shall make no charge;

For filing, indexing, or other services provided for by Part 4 of the Uniform Commercial Code—Secured Transactions, such fees as are prescribed therein.

For filing or recording or indexing any other instrument not herein expressly provided for, the same fee as hereinbefore provided for a similar service.

On each instrument delivered to him for recording, it shall be the duty of the county clerk to endorse thereon all charges made by him for such service and such endorsement shall be recorded as a part of the instrument in his office in order that the state examiner may verify such charges from time to time and may see that they have been properly entered on the fee book or reception record in the county clerk's office. [Effective January 1, 1965.]

History: En. Sec. 4635, Pol. C. 1895; C. M. 1921; amd. Sec. 1, Ch. 87, L. 1941; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. amd. Sec. 1, Ch. 90, L. 1953; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R. Ch. 202, L. 1955; amd. Sec. 2, Ch. 148, L.

1957; amd. Sec. 1, Ch. 9, L. 1959; amd. Sec. 11-115, Ch. 264, L. 1963.

Amendments

The 1957 amendment inserted the paragraph relating to instruments pertaining to Indian lands.

The 1959 amendment doubled the amount of the fees received by the county clerk for the services performed.

The 1963 amendment deleted the words "chattel mortgage, affidavit of renewal of chattel or real estate mortgage, assign-

ment or release of chattel mortgage, a" from the paragraph pertaining to writs of attachment, executions, etc.; and inserted the paragraph pertaining to services provided for by Part 4 of the Uniform Commercial Code.

Repealing Clauses

Section 3 of Ch. 148, Laws 1957 and Sec. 2 of Ch. 9, Laws 1959 repealed all acts and parts of acts in conflict therewith.

CHAPTER 3—FEES AND SALARIES OF JUSTICES OF THE PEACE AND CONSTABLES

Section 25-301. Fees of justices of the peace in civil actions.

25-303. Fees of justices of the peace in criminal actions.

25-306. Salaries of justices of the peace in certain townships—hours—quarters.

25-309. Fees of constable.

25-301. (4924) Fees of justices of the peace in civil actions. The following is the schedule of fees which must be collected by justices of the peace in every civil action introduced in a justice court:

Three dollars and fifty cents (\$3.50) when summons is issued, to be paid by the plaintiff.

Three dollars and fifty cents (\$3.50) when issue is joined, to be paid by the defendant.

Three dollars and fifty cents (\$3.50) of the prevailing party when judgment is rendered. In cases where judgment is entered by default, no charge except the three dollars and fifty cents (\$3.50) for the issuance of summons shall be made for any services, including issuing and return of execution.

Three dollars and fifty cents (\$3.50) for all services in an action where judgment is rendered by confession.

Three dollars and fifty cents (\$3.50) for filing notice of appeal and transcript on appeal, justifying and approving undertaking on appeal, and transmitting papers to the district court with certificate.

History: Ap. p. Sec. 4642, Pol. C. 1895; and as Sec. 1, Ch. 52, L. 1903; re-en. Secs. 3175-3176, Rev. C. 1907; superseded by Sec. 1, Ch. 55, L. 1921; re-en. Sec. 4924, R. C. M. 1921; amd. Sec. 1, Ch. 184, L. 1963.

Amendment

The 1963 amendment increased each of the fees mentioned from \$2.50 to \$3.50.

25-303. (4926) Fees of justices of the peace in criminal actions. The following is the schedule of fees which must be collected by justices of the peace in every criminal action instituted in the justice court, to-wit:

For all services rendered as a committing magistrate where examination is waived, three dollars and fifty cents (\$3.50).

For all services rendered as a committing magistrate where a hearing takes place and witnesses are examined, seven (\$7) dollars.

For all services rendered as a magistrate on a hearing on a complaint to bind over a person to keep the peace, three dollars and fifty cents (\$3.50).

For all services rendered where there is a plea of guilty, three dollars and fifty cents (\$3.50).

For all services rendered where there is a trial, seven (\$7) dollars.

For taking, filing, and approving bail bond, including justification, two (\$2) dollars.

For transmitting papers on appeal, and certificate, including bond and approval, three (\$3) dollars.

For all services in issuing a search warrant, to be paid by the person demanding same, two (\$2) dollars.

The total amount of fees allowed by the board of county commissioners to any one justice of the peace in criminal cases must not exceed seven hundred and fifty dollars (\$750) in any one year.

History: Ap. p. Sec. 4642, Pol. C. 1895; and as Sec. 1, Ch. 52, L. 1903; re-en. Secs. 3175-3176, Rev. C. 1907; superseded by Sec. 3, Ch. 55, L. 1921; re-en. Sec. 4926, R. C. M. 1921; amd. Sec. 2, Ch. 184, L. 1963.

Amendment

The 1963 amendment increased all \$1.00 fees to \$2.00, all \$1.50 fees to \$3.00, all \$2.50 fees to \$3.50, all \$5.00 fees to \$7.00, and the maximum annual total from \$500 to \$750.

25-306. (4929) Salaries of justices of the peace in certain townships—hours—quarters. Justices of the peace in townships having a population of ten thousand (10,000) people, and not exceeding fifteen thousand (15,000) people, shall each receive a salary of three thousand four hundred dollars (\$3,400.00) per annum, payable monthly from the county treasury; justices of the peace in townships having a population of more than fifteen thousand (15,000) people, and not exceeding eighteen thousand (18,000) people, shall each receive a salary of three thousand six hundred dollars (\$3,600.00) per annum, payable monthly from the county treasury; justices of the peace in townships having a population of more than eighteen thousand (18,000) people, shall each receive a salary of four thousand six hundred dollars (\$4,600.00) per annum, payable monthly from the county treasury; justices of the peace in such townships shall receive no other additional fees or compensation whatever, except that they may receive and keep those fees designated as "miscellaneous fees" by section 25-304 of this code; justices of the peace in townships having a population of less than ten thousand (10,000) people shall receive the fees and emoluments provided under existing laws; justices of the peace in townships having a population of ten thousand (10,000) people and upwards shall keep their offices open for business from 9 o'clock A.M. to 12 o'clock M., and from 1 o'clock P.M. to 5 o'clock P.M. on all judicial days, and at such other hours on judicial days as they may desire; providing, however, the office may be closed from 1 o'clock P.M. to 5 o'clock P.M. on Saturdays and such justices shall occupy such quarters as may be furnished and selected for them by the board of county commissioners, and said board may, in its discretion, select suitable quarters for such justices and may, in its discretion, pay for same from money in the county treasury.

History: En. Sec. 1, Ch. 84, L. 1917; re-en. Sec. 4929, R. C. M. 1921; amd. Sec. 1, Ch. 175, L. 1949; amd. Sec. 1, Ch. 51, L. 1953; amd. Sec. 1, Ch. 47, L. 1957; amd. Sec. 3, Ch. 184, L. 1963.

Amendments

The 1957 amendment increased the salaries of justices of the peace in townships having a population of 10,000 people and not exceeding 15,000 people from \$2,200 to \$2,800; in townships of more than 15,000 people and not exceeding 18,000 people from \$2,400 to \$3,000; in townships of more than 18,000 people from \$2,900 to \$3,600. The 1957 amendment deleted the words "and not more than twenty-two thousand (22,000) people" which appeared after "(18,000) people" the second time it appears and deleted the words "justices of the peace in townships having a population of more than twenty-two thousand people shall each receive a salary of three thousand two hundred dollars (\$3,200.00), payable monthly from the county treasury; and" which appeared

immediately before the words "justices of the peace in such townships shall receive no other additional fees."

The 1963 amendment increased the salaries of justices in townships of 10,000 to 15,000 people from \$2,800 to \$3,400, in townships of 15,000 to 18,000 from \$3,000 to \$3,600, and in townships of more than 18,000 from \$3,600 to \$4,600.

Repealing Clauses

Section 2 of Ch. 47, Laws 1957 and Sec. 4 of Ch. 184, Laws 1963 repealed all acts and parts of acts in conflict therewith.

False Imprisonment Action Against Sheriff

In an action for false imprisonment against a sheriff and the surety on his official bond on the ground of unnecessary delay, it was essential that the plaintiff prove that a magistrate was actually available on the particular day when the false imprisonment allegedly occurred. *Rounds v. Bucher*, 137 M 39, 349 P 2d 1026.

25-309. (4932) Fees of constable. For serving summons, including copy on each defendant, besides mileage, fifty cents.

For serving subpoena, including copy on each person, besides mileage, twenty cents.

For all services in summoning a jury and taking charge of same, two dollars.

For all services in serving an attachment on property, or levying an execution, or executing an order of arrest, or order for the delivery of personal property, including all copies, one dollar.

For the expense in taking and keeping possession of or preserving property under attachment, execution, or other process, the same fees and upon the same conditions as allowed to the sheriff.

For taking and receiving undertaking in any case in which he is authorized, one dollar.

For serving every notice, rule or order, besides mileage, including copy, one dollar.

For advertising any property for sale under execution, exclusive of costs of publication, one dollar.

For serving writ of possession, besides mileage, two dollars.

For all services in trial of right of property or damages, besides mileage, three dollars.

For commissions for receiving and paying over money on execution or other process where property has been levied on and sold, two per cent; when collected without sale, one per cent.

For mileage, the same as sheriff and under the same conditions.

For executing in duplicate a certificate of sale exclusive of the fee for filing, one dollar.

For drawing and executing a constable's deed, including acknowledgment, three dollars.

For making every arrest in a criminal proceeding, or executing a search warrant, besides mileage, one dollar and fifty cents.

For all services in summoning and taking charge of a jury, two dollars.

For serving a subpoena, including copy on each person, besides mileage, twenty cents.

For every mile necessarily traveled in executing any warrant, serving subpoena, or taking a person before a magistrate or to jail, the same mileage as in civil actions, and under the same conditions, and in addition, in serving a subpoena or warrant when two or more persons are named in any warrant or subpoena, in the same or different actions in the hands of the officer, and such persons live in the same direction, but one mileage must be charged, as provided for the mileage of sheriffs in civil actions.

When two or more persons are brought before a magistrate or to jail at the same time, or might have been so brought, the officer must be allowed but one mileage.

For conveying a person when under arrest, the actual expense incurred in the transportation of such person must be allowed by the board of county commissioners, but the officer must pay his own expenses out of his mileage.

The total amount of fees allowed in criminal cases by the board of county commissioners must not exceed five hundred dollars (\$500.00) in any one year. The excess must be paid into the contingent fund of the county treasury.

That constables in townships having a population of twelve thousand (12,000) people and not exceeding twenty thousand (20,000) people, shall each receive a salary of \$900.00 per annum, payable monthly from the county treasury. Constables in townships having a population of more than twenty thousand (20,000) people shall each receive a salary of \$2,400.00 per annum, payable monthly from the county treasury, and constables in such townships where the population is twelve thousand (12,000) people and not more than thirty-five thousand (35,000) people shall receive no other fees for civil suits or criminal actions except mileage in the performance of their duties. Any such fees received by the constables shall be turned over to the county treasurer.

History: En. Sec. 4643, Pol. C. 1895; re-en. Sec. 3177, Rev. C. 1907; re-en. Sec. 4932, R. C. M. 1921; amd. Sec. 1, Ch. 152, L. 1935; amd. Sec. 1, Ch. 160, L. 1957.

population of more than twenty thousand from \$1,500 to \$2,400.

Repealing Clause

Section 2 of Ch. 160, Laws 1957 repealed all acts or parts of acts in conflict therewith.

Amendment

The 1957 amendment increased the salary of constables in townships having a

CHAPTER 4—JURORS' AND WITNESSES' FEES

Section 25-401. Jurors' fees.

25-404. Witnesses' fees.

25-401. (4933) Jurors' fees. Grand and trial jurors shall receive ten dollars per day for attendance before any court of record and eight cents per mile each way for traveling from and to their residence and county seat. Any juror who is excused from attendance upon his own motion on

the first day of his appearance in obedience to notice, or who has been summoned as a special juror and not sworn in the trial of the case, in the discretion of the court, may receive per diem and mileage.

History: En. Sec. 1, Ch. 48, L. 1903; re-en. Sec. 3178, Rev. C. 1907; amd. Sec. 1, Ch. 6, L. 1917; re-en. Sec. 4933; R. C. M. 1921; amd. Sec. 1, Ch. 18, L. 1935; amd. Sec. 1, Ch. 9, L. 1945; amd. Sec. 1, Ch. 117, L. 1963.

Amendment

The 1963 amendment increased per diem for attendance from \$6 to \$10 and mileage from "five cents" to "eight cents."

25-404. (4936) Witnesses' fees. For attending in any civil or criminal action or proceeding before any court of record, referee, or officer authorized to take depositions, or commissioners to assess damages or otherwise, for each day, six dollars. For mileage in traveling to the place of trial or hearing, each way, for each mile, eight cents; provided, however, that no officer of the United States, the state of Montana, or of any county, incorporated city or town within the limits of the state of Montana shall receive any per diem when testifying in a criminal proceeding, and that no witness shall receive fees in any more than one criminal case on the same day.

History: En. Sec. 4648, Pol. C. 1895; re-en. Sec. 3182, Rev. C. 1907; re-en. Sec. 4936, R. C. M. 1921; amd. Sec. 2, Ch. 18, L. 1935; amd. Sec. 2, Ch. 117, L. 1963.

Amendment

The 1963 amendment increased per diem allowance from \$3 to \$6 and mileage from "seven cents" to "eight cents."

25-414. (4947) Expert witnesses.

Exclusion from Costs

Expert witness fees are excluded from

costs in a condemnation case. *State v. Heltborg*, — M —, 369 P 2d 521, 525.

CHAPTER 5—SALARIES OF STATE OFFICERS, DEPUTIES AND EMPLOYEES

Section 25-501. Salaries of elected state officials.

25-501.1. Salary to be for all services.

25-508. Traveling expenses of officers attending conventions.

25-501. Salaries of elected state officials. The annual salaries paid to the various elected officials of the state of Montana shall be as follows:

Governor	\$22,000.00
Chief justice of the supreme court	\$17,000.00
Justices of the supreme court, each	\$16,000.00
Attorney general	\$15,000.00
State auditor	\$10,000.00
Superintendent of public instruction	\$12,500.00
Railroad commissioner	\$10,000.00
State treasurer	\$10,000.00
Secretary of state	\$10,000.00
Clerk of the supreme court	\$ 8,500.00

History: En. Sec. 1, Ch. 202, L. 1959; amd. Sec. 2, Ch. 187, L. 1961; amd. Sec. 1, Ch. 212, L. 1963.

Ch. 202, Laws 1959, as the subject-matter is identical.

Title of Act

An act to provide for salary schedules for various elected officials and administrative heads, whatever title they may

Compiler's Note

This section is substituted for prior section 25-501 which was repealed by Sec. 3,

have, of various boards, bureaus and commissions; making it unlawful to accept a subordinate position at an increased salary to avoid the intent of this act; defining the scope of salaries, but that such scope shall not limit certain longevity pay; repealing sections 25-501, 25-502, 25-503, and 25-505 of the Revised Codes of Montana, 1947; and containing a repealing clause.

Amendments

The 1961 amendment changed the salaries of the chief justice and other justices of the supreme court, from \$11,500.00 to \$12,700.00.

The 1963 amendment increased the governor's salary from \$14,000 to \$22,000, the chief justice's salary from \$12,700 to

\$17,000, the other supreme court justices' salaries from \$12,700 to \$16,000, the attorney general's salary from \$9,500 to \$15,000, the salaries of the auditor, railroad commissioner, treasurer, and secretary of state from \$8,000 to \$10,000, the salary of the superintendent of public instruction from \$8,500 to \$12,500, and that of the clerk of the supreme court from \$6,500 to \$8,500.

Repeal

Former section 25-501 (Sec. 1, Ch. 182, L. 1949; amd. Sec. 1, Ch. 237, L. 1955), relating to salaries of state officers, was repealed by Sec. 3, Ch. 202, Laws 1959. Section 1 of Ch. 202, Laws 1959 has been given the same section number and substituted therefor by the compiler.

25-501.1. Salary to be for all services. The salary of each such officer shall be for all services required of him or which may hereafter devolve upon him by law, including all services rendered ex officio as a member of any board, commission or committee, but shall not include actual necessary traveling, lodging and subsistence expenses incidental to his official duties; provided, however, that this provision shall not apply to the salary of the supervisor of the highway patrol so as to deprive him of his length-of-service salary increase as provided by section 31-105 of these codes.

History: En. Sec. 2, Ch. 202, L. 1959; amd. Sec. 2, Ch. 187, L. 1961.

Compiler's Note

Section 1 of Ch. 187, Laws 1961, amended sec. 93-303.

Amendment

The 1961 amendment made no change in this section.

Repealing Clauses

Section 3 of Ch. 202, Laws 1959 read "That sections 25-501, 25-502, 25-503, and 25-505 of the Revised Codes of Montana, 1947, are hereby repealed."

Section 4 of Ch. 202, Laws 1959 and Sec. 3 of Ch. 187, Laws 1961 repealed all acts and parts of acts in conflict therewith.

25-502. (437) Repealed.

Repeal

This section (Sec. 1, Ch. 107, L. 1919; amd. Sec. 2, Ch. 57, L. 1935), relating to the salaries of clerk of board of examiners,

state accountant and clerk of consolidated boards, was repealed by Sec. 3, Ch. 202, Laws 1959.

25-503. (438) Repealed.

Repeal

This section (Sec. 2, Ch. 107, L. 1919), relating to the salaries of state examiner,

his assistants, deputies, clerks and the private secretary to the governor, was repealed by Sec. 3, Ch. 202, Laws 1959.

25-505. (440) Repealed.

Repeal

This section (Sec. 1, Ch. 40, L. 1915, and as affected by later acts), relating

to the salaries of deputy state officers, was repealed by Sec. 3, Ch. 202, Laws 1959.

25-508. (443) Traveling expenses of officers attending conventions. (1) Hereafter no state, county, city or school district officer or employee of the state or of any county or city, or of any school district, shall receive payment from any public funds for traveling expenses or other expenses

of any sort or kind for attendance upon any convention, meeting, or other gathering of public officers save and except for attendance upon such convention, meeting or other gatherings as said officer or employee may by virtue of his office find it necessary to attend, and provided further, that the board of trustees of any county or district high school or of any school district may by resolution adopted by a majority of the entire board make their district a member of any state association of school districts or school district trustees, or any other strictly educational association and authorize the payment of dues to such association, and the necessary traveling expenses of an employee, or one (1) member of said board, to attend meetings of such association, or other meetings called for the express purpose of considering educational matters.

(2) Provided, further, three (3) members of the board of county commissioners may be allowed actual transportation expenses and per diem for attendance upon any general meeting of county commissioners or assessors held within the state not oftener than once a year and the proportionate expenses and charges against each county as a member of such association shall also be paid; provided also that county attorneys and sheriffs are hereby authorized to attend their respective meeting or convention held within the state and are allowed actual traveling expenses not oftener than once a year for attending same.

(3) Provided, further, that nothing herein shall be construed to prevent any city or town council, commission or other governing body from paying membership fees and dues in any organization of city and town officials whose purpose is improvement of laws relating to city and town government and their better and more economical administration, and the necessary expense of any regular officer or employee of such city or town in attending any convention or meeting of such organization upon the direction of such council, commission, or other governing body by order upon its minutes stating that the public interest requires such attendance; such payment of membership fees, dues and/or expense to be made from such fund of the city or town as the council, commission or other governing body shall direct by such order, upon claim presented, audited and allowed as are other claims against such city or town.

(4) Provided, further, that all county clerk and recorders of the various counties throughout the state of Montana shall be allowed actual transportation expenses and per diem allowance for attendance upon any general meeting of the Montana Association of County Clerk and Recorders held within the state, not oftener than once a year, and the proportionate expenses and charges against each county as a member of such association shall be paid by such county.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R. C. M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963.

Amendments

The 1957 amendment in subd. (2) substituted "three (3) members" for "one (1) member."

The 1961 amendment in subd. (1) after the words "as said officer" inserted the words "or employee" and also in subd. (1) substituted the words "find it necessary to

attend" for the words "be required by law to attend."

The 1963 amendment added subd. (4).

Repealing Clause

Section 2 of Ch. 184, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 6—SALARIES OF COUNTY OFFICERS, DEPUTIES AND EMPLOYEES

Section 25-605. Salaries of certain county officers.

25-609. Salaries fixed by county commissioners in September of each election year—salaries not subject to change during entire term.

25-605. Salaries of certain county officers. The salaries of county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, county assessors, county superintendents of schools, and of county surveyors in counties where county surveyors now receive salaries, as provided in section 32-303, Revised Codes of Montana, 1947, shall be based on the population and taxable valuation of the county in accordance with the following schedule:

Population of County	Salary Col. A	Taxable Valuation of County	Salary Col. B
Below 3,000	\$1,825	Below \$2,000,000	\$1,825
3,000 to 3,999	1,875	\$2,000,000 to 2,999,999	1,875
4,000 to 4,999	1,925	3,000,000 to 3,999,999	1,925
5,000 to 5,999	1,975	4,000,000 to 4,999,999	1,975
6,000 to 6,999	2,025	5,000,000 to 5,999,999	2,025
7,000 to 7,999	2,175	6,000,000 to 6,999,999	2,175
8,000 to 8,999	2,225	7,000,000 to 7,999,999	2,225
9,000 to 9,999	2,275	8,000,000 to 9,999,999	2,275
10,000 to 12,499	2,325	10,000,000 to 11,999,999	2,325
12,500 to 14,999	2,375	12,000,000 to 13,999,999	2,375
15,000 to 17,499	2,425	14,000,000 to 15,999,999	2,425
17,500 to 19,999	2,475	16,000,000 to 17,999,999	2,475
20,000 to 24,999	2,525	18,000,000 to 19,999,999	2,525
25,000 to 29,999	2,575	20,000,000 to 22,499,999	2,575
30,000 to 39,999	2,625	22,500,000 to 24,999,999	2,625
40,000 to 49,999	2,700	25,000,000 to 29,999,999	2,700
50,000 to 59,999	2,800	30,000,000 to 34,999,999	2,800
60,000 to 69,999	2,900	35,000,000 to 39,999,999	2,900
70,000 to 79,999	3,000	40,000,000 to 44,999,999	3,000
80,000 to 89,999	3,100	45,000,000 to 49,999,999	3,100
90,000 to 99,999	3,200	50,000,000 to 54,999,999	3,200
100,000 and over	3,300	55,000,000 to 59,999,999	3,300
		60,000,000 to 64,999,999	3,300
		65,000,000 to 69,999,999	3,300
		70,000,000 to 74,999,999	3,300
		75,000,000 to 79,999,999	3,300

The total salary paid to county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, county assessors, county superintendents of schools, and county surveyors in counties where county sur-

veyors receive salaries, as provided in section 32-303, Revised Codes of Montana, 1947, shall be the sum of the salary shown in column A based on population when added to the salary shown in column B based on taxable valuation.

History: En. Sec. 1, Ch. 150, L. 1945; amd. Sec. 1, Ch. 177, L. 1949; amd. Sec. 1, Ch. 118, L. 1951; amd. Sec. 1, Ch. 222, L. 1953; amd. Sec. 1, Ch. 22, L. 1957; amd. Sec. 1, Ch. 66, L. 1959; amd. Sec. 1, Ch. 195, L. 1961.

Amendments

The 1957 amendment added county attorneys and sheriffs to the list of county officers; increased all salaries (for comparison, see parent volume); under Population of County substituted "80,000 to 89,999" for "80,000 and over" and added "90,000 to 99,999" and "100,000 and over"; under Taxable Valuation of County added the last two classifications and deleted from the last paragraph a proviso which read "provided that the minimum salary to be paid under the foregoing schedule will not be less than twenty-nine hundred eight (\$2908.00) dollars per annum."

The 1959 amendment added the classifications "70,000,000 to 74,999,999" and "75,000,000 to 79,999,999" under the Taxable Valuation of County and added the corresponding salary in Column B for those classifications.

The 1961 amendment in the first and last paragraphs after the words "county treasurers," deleted the words "county clerks," and inserted the words "clerk and recorder, clerk of the court"; increased

the salary amounts in both Column A and Column B (except for assessed valuation of \$65,000,000 and above) from \$1,614 to \$1,825, from \$1,682 to \$1,875, from \$1,752 to \$1,925, from \$1,822 to \$1,975, from \$1,905 to \$2,025, from \$1,948 to \$2,175, from \$2,012 to \$2,225, from \$2,076 to \$2,275, from \$2,196 to \$2,325, from \$2,263 to \$2,375, from \$2,329 to \$2,425, from \$2,395 to \$2,475, from \$2,406 to \$2,525, from \$2,494 to \$2,575, from \$2,572 to \$2,625, from \$2,663 to \$2,700, from \$2,755 to \$2,800, from \$2,849 to \$2,900, from \$2,944 to \$3,000, from \$3,052 to \$3,100, from \$3,114 to \$3,200, from \$3,176 to \$3,300, and from \$3,263 (for assessed valuation of \$60,000,000 to \$64,999,999) to \$3,300; and reduced the salary amounts in the last three lines of Column B from \$3,325, \$3,419, and \$3,513, respectively, to \$3,300.

Repealing Clauses

Section 2 of Ch. 22, Laws 1957 read "That sections 25-606 and 25-607, Revised Codes of 1947, as amended by section 2 and section 3 of chapter 222, Session Laws of 1953, and all other acts and parts of acts in conflict herewith are hereby repealed."

Section 2 of Ch. 66, Laws 1959 and Sec. 2 of Ch. 195, Laws 1961 repealed all acts and parts of acts in conflict therewith.

25-606, 25-607. Repealed.

Repeal

These sections (Secs. 2, 3, Ch. 150, L. 1945; amd. Sec. 1, Ch. 177, L. 1949; amd. Secs. 2, 3, Ch. 222, L. 1953), relating to

the salary of sheriff and county attorney, were repealed by Sec. 2, Ch. 22, Laws 1957.

25-609. Salaries fixed by county commissioners in September of each election year—salaries not subject to change during entire term. In September of any year in which the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, county attorney, or clerk of the district court is to be elected, the county commissioners shall, by resolution, fix the salaries of the officials to be elected in conformity with the schedule in section 25-605, based on the population as shown in the last decennial federal census and on the taxable valuation of the county at the time the salaries are fixed. When so fixed, the salaries shall not be changed during the entire term for which such officials are elected regardless of any change in population or taxable valuation of the county during such term. If a vacancy occurs in any office, the person who is appointed or elected to fill the unexpired term in the office vacated shall receive the same salary as the person vacating the office.

History: En. Sec. 5, Ch. 150, L. 1945; amd. Sec. 1, Ch. 177, L. 1949; amd. Sec. 4, Ch. 222, L. 1953; amd. Sec. 1, Ch. 98, L. 1963.

Amendment

The 1963 amendment divided the former second sentence into the present second and third sentences; added the words "regardless of any change in population or

taxable valuation of the county during such term" to the present second sentence; and made minor changes in phraseology in the second and third sentences.

Repealing Clause

Section 2 of Ch. 98, Laws 1963 repealed all acts and parts of acts in conflict therewith.

TITLE 26—FISH AND GAME

- Chapter 1. Fish and game commission and wardens—creation—powers and duties, 26-103 to 26-105, 26-107, 26-121, 26-123, 26-135, 26-136.
2. Fishing and hunting licenses, 26-201, 26-202.1, 26-202.2, 26-202.3, 26-215, 26-222.
 3. Restrictions on taking fish and game—open and closed seasons, 26-301, 26-302, 26-307, 26-321, 26-332.
 4. Beaver—trapping—license—protection, 26-401.
 5. Protection of certain wild birds—sale of confiscated birds and animals, 26-510 to 26-512.
 7. Shipment of animals from state, 26-701.
 8. Miscellaneous prohibitions, 26-811.
 9. Outfitter's license—taxidermist's license, 26-907.

CHAPTER 1—FISH AND GAME COMMISSION AND WARDENS— CREATION—POWERS AND DUTIES

- Section 26-103. Meetings.
- 26-104. Powers and duties of commission.
- 26-105. Compensation of commissioners.
- 26-107. State fish and game wardens—appointment—qualifications.
- 26-121. State fish and game moneys.
- 26-123. Salaries, per diem and expenses, how paid.
- 26-135. Wild animals damaging property—investigation—special season—destruction by commission—allowing holders of property to kill.
- 26-136. Meat of wild animals so killed—disposition.

26-103. (3652) **Meetings.** The members of the commission shall within thirty (30) days after their appointment and annually thereafter meet and organize by electing from its membership a chairman and shall hold quarterly or other meetings for the transaction of business, at such times and places it may deem necessary and proper, said meetings to be called by the chairman, or by a majority of the commission, and to be held at the time and place specified in the call for the same. A majority of the members of the commission shall constitute a quorum for the transaction of any business which may come before it. The said commission shall keep a record of all the business transacted by it. The chairman and secretary, hereinafter designated, shall sign all orders, minutes or documents for the commission. The principal offices of the commission shall be located near the capitol building in Helena, and suitable and adequate rooms therefor, together with janitor services, light, heat and water shall be furnished by the state of Montana, rental shall be charged at two dollars (\$2.00) per square foot per year for the total space occupied. Such charge to the commission shall be in effect until such time as the commission shall provide other building or buildings. Such rental collected shall be deposited to the credit of the state general fund.

History: En. Sec. 3, Ch. 193, L. 1921; re-en. Sec. 3652, R. C. M. 1921; amd. Sec. 1, Ch. 77, L. 1923; amd. Sec. 1, Ch. 192, L. 1925; amd. Sec. 1, Ch. 114, L. 1945; amd. Sec. 1, Ch. 52, L. 1957; amd. Sec. 1, Ch. 119, L. 1959; amd. Sec. 23, Ch. 271, L. 1963.

Amendments

The 1957 amendment substituted "near the capitol building" for "in the capitol building" in the fifth sentence; added "until such time as the commission shall provide other building or buildings" at the end of the fifth sentence; and added a sentence reading, "The commission, upon the

approval of the board of examiners, is empowered to construct, acquire, erect, equip, enlarge and improve or purchase buildings suitable for its needs to be located at the seat of the state government."

The 1959 amendment deleted "necessary furnishings" which preceded "janitor services" in the fifth sentence; deleted from the end of the fifth sentence the words "without charge to the commission until such time as the commission shall provide other building or buildings"; added a sentence reading, "Rental shall be charged at two dollars (\$2.00) per square

foot per year for the total space occupied"; and added what are now the final two sentences.

The 1963 amendment combined the fifth and sixth sentences into one; deleted the sentence added by the 1957 amendment; and made a minor change in punctuation.

Repealing Clauses

Section 2 of Ch. 52, Laws 1957 and Sec. 2 of Ch. 119, Laws 1959 repealed all acts and parts of acts in conflict therewith.

26-104. (3653) Powers and duties of commission.

(1) to (9). * * * [Subsections (1) to (9), same as parent volume.]

(10) It shall have the authority to purchase and maintain at the expense of the state fish and game fund suitable fish screens or fish wheels, or other devices, to install in irrigating ditches to prevent fish entering said ditches.

(11) to (14). * * * [Subsections (11) to (14), same as parent volume.]

(15) It shall have authority to fix seasons and bag limits, open or close, shorten or lengthen seasons on any species of game, bird, fish or furbearing animal as defined by section 26-201 of this code, and to declare areas open to the hunting of deer, antelope and elk by bow and arrow permit holders, and during times when only bow and arrows may be used, to hunt deer, antelope and elk in such areas; it is authorized to declare areas open to deer hunting where shotguns only may be used to hunt or kill deer; and it is authorized to declare areas which may be open to special license holders only, and issue special licenses in a limited number when it shall determine, after proper investigation, that such a season is necessary to assure the maintenance of an adequate supply of game animals, or to declare such a special season and issue special licenses whenever game animals are causing damage to private property, or when written complaint of such damage has been filed with the state fish and game commission by the owner of such property, and in determining to whom such licenses shall be issued, it may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system.

(16) to (24). * * * [Subsections (16) to (24), same as parent volume.]

(25). * * * [Deleted by Sec. 1, Ch. 36, Laws 1959.]

(26) It shall have authority to promulgate and enforce rules and regulations governing recreational uses of public fishing reservoirs and lakes constructed by the commission or on reservoirs and lakes which it operates under agreement with a federal or state agency or private owner.

Such rules shall be promulgated in the interest of public health, public safety and protection of property in regulating swimming, boating, water skiing, surf boarding, picnicking, camping, sanitation and use of firearms on such reservoirs or at designated areas along the shore of such reser-

voirs. These rules shall be subject to review and approval by the state board of health as to public health and sanitation before becoming effective. Copies of such rules shall show such endorsement.

History: En. Sec. 4, Ch. 193, L. 1921; re-en. Sec. 3653, R. C. M. 1921; amd. Sec. 2, Ch. 77, L. 1923; amd. Sec. 2, Ch. 192, L. 1925; amd. Sec. 1, Ch. 200, L. 1935; amd. Sec. 1, Ch. 157, L. 1941; Subsec. (24) added by Sec. 1, Ch. 40, L. 1951; Subsec. (15) amd. Sec. 1, Ch. 157, L. 1955; Subsec. (25) added by Sec. 1, Ch. 151, L. 1957; amd. Sec. 1, ch. 36, L. 1959; Subsec. (26) added by Sec. 1, Ch. 96, L. 1959.

Compiler's Note

This section was amended twice by the 1959 legislature, once by Ch. 36, approved February 25, 1959 and once by Ch. 96, approved March 2, 1959. Neither amendment carried a specific effective date nor did either act mention the amendment by the other act. As each act amended the section in different particulars the changes made by each are incorporated in this section by the compiler.

Amendments

The 1957 amendment added subsec. (25) which read: "(25) It shall have authority to take rough fish of the following species: carp, suckers, catfish, buffalo, bullheads, goldeye, drum and squaw fish from the waters of Fort Peck Reservoir, by means of day labor, contract or permit, through the use of seines, or nets under such rules, regulations, contracts or permit as the commission shall prescribe. All rough fish so removed by the commission, by permit or contract, shall be disposed of in such form and in such manner, by sale or otherwise, as the commission, by its regulations, contracts or permits shall prescribe."

26-105. (3654) Compensation of commissioners. The members of the commission shall receive no compensation for their services as members thereof, except a per diem of fifteen dollars (\$15.00) for each member for every day in actual attendance at the meetings of said commission, or in the execution of their duties as members of said commission; provided, however, that in no instance shall any member of said commission other than the chairman receive as said per diem a sum in excess of eight hundred dollars (\$800.00) in any one (1) year, provided that the chairman of the commission shall not receive a sum in excess of one thousand dollars (\$1,000.00) in any one (1) year, and the members of said commission shall be allowed their actual and necessary traveling expenses, while performing their duties as members of said commission which shall be paid from the fish and game fund of the state of Montana upon presentation of proper vouchers therefor.

History: En. Sec. 5, Ch. 193, L. 1921; re-en. Sec. 3654, R. C. M. 1921; amd. Sec. 1, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1949; amd. Sec. 1, Ch. 6, L. 1951; amd. Sec. 1, Ch. 127, L. 1953; amd. Sec. 1, Ch. 57, L. 1957.

The 1959 amendment by Ch. 36 in subsec. (10) deleted the word "them" which appeared between the words "install" and "in"; inserted provision in subsec. (15) for hunting of "antelope and elk" with bow and arrow, and deleted subsec. (25) added by the 1957 amendment.

The 1959 amendment by Ch. 96 added subsec. (26) to this section.

Repealing Clauses

Section 2 of Ch. 151, Laws 1957 and Sec. 2 of Ch. 96, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Subd. 4

Construction and Application

Where an employee of the state fish and game commission was summarily dismissed by the commission without sufficient notice, he was entitled to relief by way of mandamus, even though, subsequent to the discharge, he was given notice that a hearing on his dismissal would be held. *State ex rel. Opheim v. State Fish & Game Comm.*, 133 M 362, 323 P 2d 1116, 1118.

The power of discharge must be "for cause" and there is no distinction between officers and employees, and removal may be effected only after notice of the charges made has been given and the person involved has been given an opportunity to be heard in his defense. *State ex rel. Opheim v. State Fish & Game Comm.*, 133 M 362, 323 P 2d 1116, 1119.

Amendment

The 1957 amendment inserted the words "other than the chairman"; substituted "eight hundred dollars (\$800.00)" for "six hundred dollars (\$600.00)" and inserted the words "provided that the chairman of the commission shall not receive a sum in excess of one thousand dollars (\$1,000.00) in any one (1) year."

Repealing Clause

Section 2 of Ch. 57, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 57, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 27, 1957.

26-107. (3656) State fish and game wardens—appointment—qualifications. The director, by and with the consent and approval of the commission, shall have the power to employ and appoint a deputy director, and a sufficient number of state fish and game wardens for the proper enforcement of the fish and game laws of the state, and the orders, rules and regulations of the commission, and for such other purposes as the director may designate. State fish and game wardens shall be selected from applicants who have passed such an examination as may be required according to the rules adopted and promulgated by the commission. No person shall be appointed a state fish and game warden until a certificate shall have been issued to him by the commission to the effect that he has passed the required examination and is a fit and proper person to perform the duties of the office. State fish and game wardens employed and appointed by virtue of this act shall be persons who have an interest in protection, conservation and propagation of wildlife, game and fur-bearing animals, fish and game birds; they shall devote all of their time to their official duties.

History: En. Sec. 7, Ch. 193, L. 1921; re-en. Sec. 3656, R. C. M. 1921; amd. Sec. 4, Ch. 192, L. 1925; amd. Sec. 3, Ch. 59, L. 1927; amd. Sec. 1, Ch. 158, L. 1941; amd. Sec. 1, Ch. 121, L. 1947; amd. Sec. 1, Ch. 58, L. 1951; amd. Sec. 1, Ch. 78, L. 1955; amd. Sec. 1, Ch. 77, L. 1957.

Amendment

The 1957 amendment inserted the words "fish and" before the words "game ward-

ens" each time they appear in this section and deleted the words "who shall have previously served as a state game warden," which appeared after the words "deputy director" in the first sentence.

Repealing Clause

Section 2 of Ch. 77, Laws 1957 repealed all acts and parts of acts in conflict therewith.

26-108. (3657) Employees of the commission—removal, etc.

Removal of Employee

This section does not require that the director hold a hearing before discharging an employee for cause but merely requires that the employee have an opportunity for hearing before the commission. State ex rel. Hollibaugh v. State Fish and Game Commission, 139 M 384, 365 P 2d 942, 947.

The fish and game commission did not act arbitrarily in discharging a state

fish and game warden where the evidence showed his incompetency. State ex rel. Hollibaugh v. State Fish and Game Commission, 139 M 384, 365 P 2d 942, 947.

Misconduct need not be so serious as to support a criminal conviction in order to furnish cause for removal of an employee. State ex rel. Hollibaugh v. State Fish and Game Commission, 139 M 384, 365 P 2d 942, 948.

26-110. (3659) Qualifications, powers and duties of game wardens.

Operation and Effect

This section has reference only to what the legislature denounced as unlawful possession under section 26-503, and for which the accused could be prosecuted

for unlawful possession. Shipman v. Todd, 131 M 365, 310 P 2d 300, 302.

Where plaintiff lawfully killed a deer but failed to fill out the tag attached to his hunting license and attach it to the

carcass, the deer was not unlawfully possessed and the game warden was without authority to seize and confiscate the car-

cass when he arrested plaintiff for failure to attach the tag. *Shipman v. Todd*, 131 M 365, 310 P 2d 300, 302.

26-118. (3667) State fish and game commission to control, etc.

Temporary Law

Chapter 258, Laws 1963, effective until June 30, 1965, provides for the protection of fishing streams affected by public works projects. The act read: "An act to establish the policy of the state of Montana on protection of fishing streams; providing for submission of plans for construction and hydraulic projects affecting such streams to the Montana fish and game commission and for review of such plans; and providing for arbitration of disagreements between the fish and game commission and the agency proposing such projects.

"Section 1. It is hereby declared to be the policy of the state of Montana that its fish and wildlife resources and particularly the fishing waters within the state are to be protected and preserved to the end that they be available for all time, without change, in their natural existing state except as may be necessary and appropriate after due consideration of all factors involved.

"Section 2. An agency of state government, county, municipality, or other subdivision of the state of Montana, hereafter called applicant, shall not construct, modify, operate, maintain, or fail to maintain, any construction project or hydraulic project which may or will obstruct, damage, diminish, destroy, change, modify, or vary the natural existing shape and form of any stream or its banks or tributaries by any type or form of construction without first causing notice of such planned construction to be served upon the Montana fish and game commission, on forms furnished by the fish and game commission as soon as preliminary plans are completed, but not less than sixty (60) days prior to commencement of final plans for construction. Such notice shall include detailed plans and specifications of so much of said project as may or will affect in any manner specified above any such stream.

"Section 3. The commission shall promptly examine and investigate all such plans. Should the commission determine the plans and specifications furnished with any such application technically insufficient the commission shall so notify the applicant, and may render aid in preparing adequate plans and specifications.

"Section 4. Within thirty (30) days after the receipt of such plans, the commission shall notify the applicant whether or not such construction project or hydraulic project will adversely affect any

fish or game habitat. If the fish and game commission notifies the applicant that such construction will adversely affect any fish or game habitat, it shall accompany such notice with recommendations or alternative plans which will eliminate or diminish such adverse effect.

"Section 5. (1) If the fish and game commission notifies the applicant that the construction will adversely affect fish or game habitat, the applicant, within fifteen (15) days after receiving the recommendations and alternatives of the fish and game commission, shall notify the fish and game commission if it refuses to modify its plans in accordance with such recommendations or alternatives. In the event of such refusal, the disagreement shall be arbitrated as provided in subsection (2) of this section.

"(2) Upon receipt of such notice of refusal, the fish and game commission shall immediately determine if it wants the disagreement subjected to arbitration. Within ten (10) days after such determination, and after notice to the agency involved, the fish and game commission shall then designate one person as an arbitrator and the agency involved shall designate another person as an arbitrator. Within five (5) days after appointment of such arbitrators, said arbitrators shall agree upon a third person who shall have no connection with either the agency involved or the Montana fish and game department, and these three (3) persons shall be considered the board of arbitration. Within ten (10) days after such board is designated, the arbitration board shall meet, hear testimony and issue a decision signed by at least two members of the arbitration board. Such decision shall be binding on all parties concerned. The expense of the third arbitrator shall be divided equally between the agency involved and the Montana fish and game department. All other expenses of arbitration shall be borne by the fish and game department.

"Section 6. This act shall not operate or be so construed as to impair, diminish, divest, or control any existing or vested water rights under the laws of the state of Montana or the United States, or in emergencies such as floods, ice jams or other conditions causing emergency handling.

"Section 7. This act shall not apply to any state water conservation board irrigation project presently operating, or that may be constructed in the future or to

any irrigation district project or any other irrigation project.

"Section 8. This act shall be in full force and effect until June 30, 1965."

26-121. (3670) State fish and game moneys. (1) All moneys collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from fines, damages collected for violations of the fish and game laws of this state, from the appropriations, or received by the commission from any other state source, shall be turned over to the state treasurer, and placed by him in the earmarked revenue fund to the credit of the fish and game commission, provided that out of any fines imposed by a court for the violation of this act, the costs of prosecution shall be paid to the county where the trial was held, in any case where the fine is not imposed in addition to the costs of prosecution. Any moneys received from federal sources shall be deposited in the federal and private revenue fund to the credit of the fish and game commission.

(2) Said moneys are hereby exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses and expenditures of every source and kind whatsoever, authorized to be made by the state fish and game commission under the terms of this act, and said moneys shall be expended for any and all such purposes, by said commission, subject to appropriation by the legislative assembly of each session; provided, however, that all equipment, printing, materials and supplies of every nature required for the administration and operation of the state fish and game commission must be requisitioned for through the state purchasing agent, and the state purchasing agent shall purchase all necessary equipment, printing, materials and supplies of every nature required for the administration and operation of the state fish and game commission, without charge to the commission for such services.

(3) The fish and game fund is abolished. Any reference to the fish and game fund in this code shall be taken to mean fish and game moneys in the earmarked revenue fund and federal and private revenue fund.

History: En. Sec. 21, Ch. 193, L. 1921; re-en. Sec. 3670, R. C. M. 1921; amd. Sec. 32, Ch. 59, L. 1927; amd. Sec. 1, Ch. 53, L. 1933; amd. Sec. 2, Ch. 114, L. 1945; amd. Sec. 159, Ch. 147, L. 1963.

Amendment

The 1963 amendment made numerous changes and additions in this section. For section prior to amendment, see parent volume.

26-123. (3672) Salaries, per diem and expenses, how paid. All salaries, per diem, expenses and claims incurred by the state fish and game commission, or any person appointed or employed by them, shall be paid out of the state fish and game funds, upon warrants properly drawn thereon; provided, however, that the aggregate of all salaries, per diem, expenses and claims presented for payment shall not exceed at any time the total amount in said state fish and game fund. The state fish and game commission shall approve all bills properly presented which have been incurred under its authority and by its direct order. The expenses of all deputy state fish and game wardens (state fish and game wardens) shall be approved by the state fish and game warden (director), before they are paid, and the salary, per diem or expenses of any employee employed in the propagation or distribution of fish shall be approved by the superintendent of state fisheries, before they are paid. All items of

expense, amounting to more than one and one-half dollars incurred by any one employed in the state fish and game department, shall be evidenced by a proper voucher or receipt, before they shall be approved, allowed, or paid.

History: En. Sec. 23, Ch. 193, L. 1921; re-en. Sec. 3672, R. C. M. 1921; amd. Sec. 17, Ch. 97, L. 1961.

Amendment

The 1961 amendment deleted the words "shall be allowed by the state board of examiners, upon the presentation of prop-

er vouchers therefor, and" which appeared before "shall be paid" in the first part of the first sentence; and adopted in parentheses the words "State fish and game wardens" and "director" which had been inserted in brackets in the third sentence by the compiler of Replacement Volume 2 of the Revised Codes.

26-135. Wild animals damaging property—investigation—special season—destruction by commission—allowing holders of property to kill. Upon the request or complaint of any landholder, or person in possession and having charge of any land in the state, that wild animals of the state, protected by the fish and game laws and regulations, are doing damage to the said property or crops thereon, the state fish and game department shall investigate and study the situation with respect to damage and depredation. The department may then decide to open a special season on the said game, or if the special season method be not feasible, then the department may destroy the animals causing the damage. Provided, further, that the fish and game department may authorize and grant the holders of said property permission to kill or destroy a specified number of the animals causing the damage. Provided, further, no wild ferocious animal damaging property or endangering life shall be covered by this act.

History: En. Sec. 1, Ch. 60, L. 1957.

Title of Act

An act authorizing the destruction of game animals causing property damage and providing for the supervision, control

and disposition thereof by the state fish and game department; repealing all acts and parts of acts, in conflict herewith; and providing for an effective date of this act.

26-136. Meat of wild animals so killed—disposition. Provided, further, that the meat of all animals so killed or destroyed by the fish and game department or the authorized landholder shall be conserved and given to state institutions or to the school lunch programs, or welfare department. It shall be the duty of the fish and game department to provide transportation and distribution of the meat killed under the authorization of this act.

History: En. Sec. 2, Ch. 60, L. 1957.

Effective Date

Repealing Clause

Section 3 of Ch. 60, Laws 1957 repealed all acts or parts of acts in conflict therewith.

Section 4 of Ch. 60, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 1, 1957.

CHAPTER 2—FISHING AND HUNTING LICENSES

- | | | |
|---------|-----------|--|
| Section | 26-201. | Definitions. |
| | 26-202.1. | Licenses—fees—classifications of licenses—fees and powers under licenses. |
| | 26-202.2. | Special licenses—tagging of carcasses of game animals. |
| | 26-202.3. | Defining resident. |
| | 26-215. | Animals which may be hunted without license—persons under fifteen years of age not required to have fishing license. |
| | 26-222. | Compensation—duties. |

26-201. (3681) Definitions. For the purpose of this act, the following shall be construed, respectively to mean:

Commission. ~~That~~ ^{✓65} [The] state fish and game commission.

Person. The plural or singular, male or female, as the case demands, including individual, associations, partnerships, and corporations, unless the context otherwise requires.

Open season. The time during which game birds, fish, game and furbearing animals may be lawfully taken.

Closed season. The time during which game birds, fish, game and furbearing animals may not be lawfully taken.

Angling or fishing. The taking of, or attempting to take fish by hook and line or rod in hand.

Upland game birds. Sharptail grouse, blue grouse, prairie chicken, sage hen or sage grouse, fool hen, ruffed grouse, commonly called native pheasant or native partridge, quail, Chinese pheasant and Mongolian pheasant, commonly called ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

Migratory game birds. Waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown, sandhill and whooping cranes; rails, including coots, gallinules, sora or other rails; shore birds, including avocets, curlew, dowitcher, godwits, knots, upland plover, killdeer, sandpipers, Wilson snipes, or jacksnipes, snipes, stilts, plovers, willets and yellow legs.

Nongame birds. All wild birds not defined herein as upland game birds or migratory game birds, shall be deemed nongame birds.

Game animals. Deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, bear and bison or buffalo.

Furbearing animals. Marten or sable, otter, muskrat, fisher, mink, beaver, ~~Canada lynx~~ ^{✓6} and black-footed ferret.

Predatory animals. Coyote, wolf, wolverine, mountain lion, weasel, skunk and civetcat, and bobcat.

Game fish. All species of the family salmonidae (chars, trout, and salmon); all species of the family thymallidae (grayling); all species of the family coregonidae (whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellow pike perch); all species of the genus esox (northern pike, pickerel, and Muskellunge); all species of the genus micropeterus (bass).

History: En. Sec. 1, Ch. 238, L. 1921; re-en. Sec. 3681, R. C. M. 1921; amd. Sec. 3, ch. 77, L. 1923; amd. Sec. 12, Ch. 192, L. 1925; amd. Sec. 6, Ch. 59, L. 1927; amd. Sec. 1, Ch. 37, L. 1949; amd. Sec. 1, Ch. 36, L. 1951; amd. Sec. 1, Ch. 121, L. 1951; amd. Sec. 1, Ch. 19, L. 1953; amd. Sec. 1, Ch. 34, L. 1959.

game birds"; deleted "fox" from the definition of "furbearing animals," adding "Canada lynx and black-footed ferret," and deleted "lynx" and "black-footed ferret" from the definition of "predatory animals."

Repealing Clause

Section 2 of Ch. 34, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment added "chukar partridge" to the definition of "upland

26-202.1. Licenses—fees—classifications of licenses—fees and powers under licenses. (1) Class A License—Resident Fishing License. Upon payment of a fee of three dollars (\$3.00) the applicant who qualifies therefor shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the commission.

(2) Class A-1 License—Resident Game Bird and Bear License. Except as herein provided, any resident person of Montana who is twelve (12) years of age or older, may, upon payment of a fee of two dollars (\$2.00) receive a Class A-1 license, which will entitle the holder to pursue, hunt, shoot and kill game birds and bear and possess the dead bodies of game birds and bear which are so authorized by regulations of the commission.

(a) On and after January 1, 1964 no hunting licenses shall be issued to any resident person under the age of eighteen (18) years unless he presents to the person authorized to issue such license a certificate of competency as provided by this section.

The department of fish and game shall provide for a course of instruction in the safe handling of firearms and for the purpose may co-operate with any reputable association or organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate any person found by it to be competent to give instructions in the handling of firearms. A person so appointed shall give such course of instruction and upon the successful completion thereof shall issue to the person instructed a certificate of competency in the safe handling of firearms.

(3) Class A-2 License—Special Bow and Arrow License. Any holder of a Class A-1 license and any one of the following: a Class A-3, A-4, A-5, B-2, or B-4 license; may upon payment of an additional sum of two dollars (\$2.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot, and kill deer, antelope and elk with bow and arrow and to possess the carcass of deer, antelope and elk during a special season, as so licensed and in special areas, as may be designated by the fish and game commission.

(4) Class A-3, A-4, A-5 Licenses. Any holder of a Class A-1 license who is twelve (12) years of age or older, may upon payment of the proper fee or fees be entitled to any one or more of the following licenses: Class A-3, Deer A Tag, one dollar (\$1.00); Class A-4, Deer B Tag, one dollar (\$1.00); Class A-5, Elk Tag, one dollar (\$1.00); which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the dead bodies of game animals of the state which are so authorized by regulation of the commission.

(5) Class B License—Nonresident Fishing License. Any nonresident of the state of Montana or any person who has been a resident citizen for less than six (6) months, upon payment of the sum of ten dollars (\$10.00) to any agent of the fish and game commission authorized to issue

fishing and hunting licenses, shall be entitled to a Class B license, which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the commission.

(6) Class B-1 License—Nonresident Game Bird License. Any non-resident of the state of Montana or any person who has been a resident citizen for less than six (6) months, upon payment of the sum of twenty-five dollars (\$25.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class B-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess game birds as authorized by the rules and regulations of the commission.

(7) Class B-2 License—Nonresident Big Game License. Any non-resident of the state of Montana, or any person who has been a resident citizen for less than six (6) months, upon the payment of the sum of one hundred dollars (\$100.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B-2 license which shall authorize the holder to pursue, hunt, shoot, kill game animals, and to possess the carcasses of same, and to pursue, hunt, shoot, kill and possess game birds, and to fish with hook and line as may hereinafter be authorized by the rules and regulations of the commission.

(8) Class B-3 License—Temporary Nonresident or Tourist License. Any nonresident of the state of Montana, upon payment of the sum of three dollars (\$3.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license, which shall authorize the holder to fish with hook and line as authorized by the rules and regulations of the fish and game commission for a period of six (6) days from and after the issuance of such license.

(9) Special Licenses. Any applicant who is the holder of a Class A-1 resident bird and bear license or any applicant who is the holder of a Class B-2 nonresident big game license may apply for a special license, which in the judgment of the fish and game commission, is to be issued and shall pay the following fees therefor:

Moose, twenty-five dollars (\$25.00).

Mountain Goat, five dollars (\$5.00).

Mountain Sheep, fifteen dollars (\$15.00).

Bison or Buffalo, twenty-five dollars (\$25.00).

Antelope, one dollar (\$1.00).

In the event that the number of applications received from holders of Class A-1 resident big game licenses [bird and bear licenses] and Class B-2 nonresident big game licenses exceeds the number of special licenses which the fish and game commission desires to issue in any hunting district, then the number of special licenses issued to the holders of Class B-2 nonresident big game licenses shall not exceed ten per cent (10%) of the total issued.

(10) Class C License—Trapper's License. Any holder of a Class A-1 license, upon making application and paying the sum of ten dollars

(\$10.00) to the fish and game commission, shall be entitled to a trapper's license, which shall authorize the holder thereof to trap furbearing animals, within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission, and at such places as may be designated in said license.

(11) Class C-1 ~~License~~ — ~~Land Owner's Trapper's License~~. Any owner or tenant, or member of the immediate family of said owner or tenant, upon making application to the fish and game commission, and upon payment of the sum of one dollar (\$1.00) shall be entitled to a land owner's trapper's license which shall entitle the holder thereof to trap any furbearing animal, on land owned or leased by him, or his immediate family, at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission and at such places as may be designated in said licenses.

(12) Exception. Any person a resident of the state of Montana as defined in section 26-202.3, of the Revised Codes of Montana, 1947, who has attained the age of seventy (70) years shall be entitled to fish without a Class A license, and that any child residing at the Montana children's center at Twin Bridges, will be entitled to fish without a license, provided that said persons carry proof of age, or proof of residency at the Montana children's center, in lieu of the Class A license described in the foregoing subsection (1), and provided that for persons convicted of any violation of the fish and game laws or regulations of the state of Montana, the privilege conferred by this subsection shall be revoked for a period of not less than six (6) months. A written statement from the superintendent of the Montana children's center is proof of residency at that institution.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963.

Compiler's Note

This section was amended three times in 1963, once by Ch. 36, once by Ch. 55, and once by Ch. 148. None of the amendments mentioned nor included any of the changes made by the others. However, since the changes do not appear to conflict, except possibly as noted herein, the compiler has made a composite section incorporating the changes made by all three amendatory acts. In so doing, the compiler has inserted the bracketed words in subd. (9) to indicate that the language added there by Ch. 55, Laws 1963, may have been amended by implication by Ch. 148, Laws 1963.

Amendments

The 1957 amendment by Ch. 16, in subdivision (2) added the words at the beginning thereof "Except as herein provided" and also added the 2 paragraphs of subsection (a) of subdivision (2).

The 1957 amendment by Ch. 100, added subdivision (11) now subdivision (12).

The 1959 amendment added the words "antelope and elk" following the word "deer" wherever they appear in subd. (3) and the phrase "and in special areas" following the words "during a special season."

Chapter 36, Laws 1963, inserted the words "and that any child residing at the Montana Children's Center at Twin Bridges, will be entitled to fish without a license" and the words "or proof of residency at the Montana Children's Center" in subd. (11), now subd. (12); and added the last sentence of subd. (11), now subd. (12).

Chapter 55, Laws 1963, added the last sentence to subd. (8), now subd. (9).

Chapter 148, Laws 1963 substituted "any resident person of Montana" for "any holder of a Class A license" near the beginning of subdivision (2); reduced the fee specified in subdivision (2) from \$3.00 to \$2.00; substituted "game birds and bear" for "game animals" in two places in the latter part of the first paragraph of subdivision (2); inserted "regulations of" before "the commission" near the end of the first paragraph of subdivision (2); substi-

tuted "January 1, 1964" for "January 1, 1958" near the beginning of subdivision (2) (a); substituted "no hunting licenses" for "no big game hunting license" near the beginning of subdivision (2) (a); deleted from the first paragraph of subdivision (2) (a) a clause permitting the presentation of "evidence that he has held a hunting license issued by this state in a prior year" as an alternative to presentation of a certificate of competency, and a proviso reading, "provided further that all resident persons under fifteen (15) years of age must present a certificate of competency even if he has held a hunting license in prior years"; made minor changes in phraseology in subdivision (2); inserted "and any one of the following: a Class A-3, A-4, A-5, B-2, or B-4 license" near the beginning of subdivision (3); inserted "as so licensed" after "special season" near the end of subdivision (3); inserted a new subdivision (4) and renumbered the succeeding subdivisions; substituted "bird and bear license" for "big game license" near the beginning of present subdivision (9); added to present subdivision (9) the line concerning antelope; substituted "Class A-1 license" for "Class A license" near the beginning of present subdivision (10); deleted the words "except beaver" which followed "trap furbearing animals" in present subdivision (10) and followed "trap any furbearing animal" in present subdivision (11); made a minor change in the reference in present subdivision (12) to section 26-202.3; and deleted "and hunt game birds" which followed "shall be entitled to fish" in present subdivision (12).

Repealing Clauses

Section 2 of Ch. 16, Laws 1957; Sec. 2 of Ch. 100, Laws 1957; Sec. 3 of Ch. 36, Laws 1959 and Sec. 2 of Ch. 55, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Temporary Provision for Antelope and Deer Licenses

Chapter 138 of Laws 1963 provided for special nonresident antelope and deer licenses. Said act, which is to expire December 31, 1964, reads as follows: "An act authorizing the state fish and game com-

mission to issue special nonresident antelope and special nonresident deer licenses, fixing the fees, and powers and duties under such licenses, and containing an expiration date.

"Section 1. The state fish and game commission may issue special nonresident antelope licenses and special nonresident deer licenses as provided for in subsection 15 of section 26-104, Revised Codes of Montana, 1947, as amended. Such special licenses will be valid only for the area designated in the license, and shall expire annually on the thirty-first (31st) day of December. Such special licenses shall be issued only in areas which are not open to the hunting of elk. In areas where ten (10) or more written complaints from persons in the area involved, relating to the issuance of special nonresident deer and antelope permits, have been received by the fish and game department, a hearing at the county seat nearest to the area concerned must be held by representatives of the fish and game department where public protests will be heard. Such written complaints must be received within thirty (30) days after first announcement of seasons by the fish and game commission on or before the first day of August. Notice of such hearing shall be published in at least four (4) issues of local newspapers and by radio stations in the area concerned at least thirty (30) days prior to the date of the hearing. The fee for a special nonresident deer license shall be twenty dollars (\$20.00) and the fee for a special nonresident antelope license shall be twenty dollars (\$20.00). Not more than one (1) special nonresident deer license, and one (1) special nonresident antelope license shall be issued in any one (1) year to a nonresident. The tagging of game carcasses, as required by law, shall apply to all persons who purchased the special nonresident licenses herein provided. There shall be attached to each special nonresident antelope or deer license a permit which will authorize the holder thereof to ship or transport out of the state one (1) carcass of an animal for which such license was issued.

"Section 2. This act shall remain in full force and effect until December 31, 1964."

26-202.2. Special licenses—tagging of carcasses of game animals. (1) Special licenses authorized to be issued under the general powers of the fish and game commission may be issued only to persons holding valid big game licenses for the current year, which have been obtained by the application prior to the time of filing of application for a special license.

(2) Any person who has obtained a moose, mountain sheep, bison, or buffalo license shall not be eligible to apply for another such license for the next succeeding seven (7) years, if such person has killed or taken

an animal of the species for which such special license was issued. Any person who has obtained a moose, mountain sheep, bison or buffalo license but did not kill or take an animal of the species for which such special license was issued, shall be eligible to apply for another such license in any succeeding year if he returns his unused special license to the fish and game commission before or at the time application is made. It is further provided that any person who has received a special license for elk or mountain goat shall not be eligible to receive a second special license for this species of game animal during any license year. However, in the event the number of applications received is not equal to the number of game species desired to be killed by the commission reapplication may be made by those valid license holders of the current year who may fall within these limitations. It is further provided that any person who has killed or taken a game animal, except a deer or antelope, during the current license year, shall not be permitted to receive a special license under this act to hunt or kill a second game animal of the same species.

(3). * * * [Same as parent volume.] ✓

History: En. Sec. 2, Ch. 267, L. 1955; amd. Sec. 1, Ch. 65, L. 1963.

Amendment

The 1963 amendment reduced the waiting period specified in the first sentence of subsection (2) from ten to seven years; added the words "if such person has killed or taken an animal of the species for

which such special license was issued" to the first sentence of subsection (2); and inserted the second sentence of subsection (2).

Repealing Clause

Section 2 of Ch. 65, Laws 1963 repealed all acts and parts of acts in conflict therewith.

DECISIONS UNDER FORMER LAW

Seizure and Confiscation of Untagged Carcass

In a case which arose while section 26-205 (subsequently repealed) was in effect it was held that where plaintiff lawfully killed a deer but failed to fill out the tag attached to his hunting license and attach it to the carcass, the deer was not unlawfully possessed and the game warden was without authority to seize and confiscate the carcass when he arrested plain-

tiff for failure to attach the tax. *Shipman v. Todd*, 131 M 365, 310 P 2d 300.

Where plaintiff lawfully killed a deer but failed to fill out the tag attached to his hunting license and attach it to the carcass as required by section 26-205 (since repealed), the deer was not unlawfully possessed and the game warden was without authority to seize and confiscate the carcass when he arrested plaintiff for failure to attach the tag. *Shipman v. Todd*, 131 M 365, 310 P 2d 300.

26-202.3. Defining resident. That in determining a resident for the purpose of issuing resident fishing and hunting licenses, the following provisions shall apply:

(1) That members of the armed forces of the United States or members of the armed forces of foreign governments attached to the armed forces of the United States, who are assigned to duty in Montana, and members of their immediate families, and after a period of thirty (30) days within Montana, upon presenting assignment orders emanating from the proper unit commander, shall be considered residents for the purpose of this act. The thirty (30) day residence requirement is waived in time of war.

(2) Any citizen of the United States of America who has continuously resided within the state of Montana for a period of six (6) months im-

mediately prior to making application for said license, or who is a legal resident of the state, shall be eligible to receive a resident hunting or fishing license.

History: En. Sec. 3, Ch. 267, L. 1955; amd. Sec. 1, Ch. 106, L. 1959; amd. Sec. 1, Ch. 72, L. 1961; amd. Sec. 1, Ch. 28, L. 1963.

Amendments

The 1959 amendment in subd. (1) added the words "and their spouses" after "armed forces of the United States" and deleted the words "or regularly appointed officers and employees of the United States forest service, the United States fish and wildlife service, United States park service and the bureau of land management."

The 1961 amendment in subd. (1) inserted the words "or members of the armed forces of foreign governments at-

tached to the armed forces of the United States"; deleted the words "and their spouses"; and inserted the words "and members of their immediate families," in subd. (1).

The 1963 amendment substituted "or" for "and" before "who is a legal resident" in subd. (2); and deleted a subd. (3) which read: "Any person in possession of first citizenship papers only shall not be considered a resident citizen of Montana, but such a person may purchase nonresident licenses."

Repealing Clause

Section 2 of Ch. 106, Laws 1959 repealed all acts and parts of acts in conflict therewith.

26-215. (3691) Animals which may be hunted without license—persons under fifteen years of age not required to have fishing license. The provisions of the act shall not apply to persons pursuing, hunting, capturing, shooting, killing, taking or trapping, or attempting to kill, take or trap predatory animals, prairie dogs, ground squirrels, jack rabbits, gophers, or English sparrows, crows, hawks, fish ducks, blue heron, snow owls, great gray owls, great horned owls, black birds, kingfishers, magpies, jays and eagles, which may be pursued, hunted, taken, killed, shot, trapped, possessed or transported at any time; and minors under fifteen (15) years of age may fish for and take fish, during the open season without a license.

History: En. Sec. 11, Ch. 238, L. 1921; re-en. Sec. 3691, R. C. M. 1921; amd. Sec. 11, Ch. 59, L. 1927; amd. Sec. 3, Ch. 161, L. 1931; amd. Sec. 2, Ch. 148, L. 1963.

Amendment

The 1963 amendment deleted the words "pursue, hunt, shoot, kill, take and capture game birds and" which preceded "fish for and take fish" in the final clause of the section.

26-222. Compensation—duties. License agents, except salaried deputy fish and game wardens (state fish and game wardens), shall receive for all services rendered the sum of fifteen cents (15¢) for each license issued. On or before the 10th day of each month each license agent shall submit to the state fish and game warden (director) all duplicates of each class of licenses sold during the preceding month and shall accompany such duplicate licenses with lawful remittance of all moneys received for the sale thereof, less a fee of fifteen cents (15¢) for each license sold. Each license agent shall keep his license account open to inspection at all reasonable hours by the state fish and game commission, the state fish and game warden (director), or his deputies (wardens), or the state examiner.

History: En. Sec. 3, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 1, Ch. 31, L. 1959.

Amendment

The 1959 amendment increased compensation of license agents from "10¢" for each license issued to "15¢."

Repealing Clause

Section 2 of Ch. 31, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 31, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved February 25, 1959.

CHAPTER 3—RESTRICTIONS ON TAKING FISH AND GAME— OPEN AND CLOSED SEASONS

- Section 26-301. Restrictions of manner of taking and possessing fish and game and powers of commission relating thereto.
 26-302. Big game hunters to wear colored garments.
 26-307. Waste of fish or game—hunting or fishing during closed season—killing more than one game animal—exceptions for bear.
 26-321. Closed and open season for furbearing animals.
 26-332. Method of catching fish—use of traps, seines and nets—restrictions concerning possession and sale of fish.

26-301. (3694) Restrictions of manner of taking and possessing fish and game and powers of commission relating thereto. 1 to 7. * * *
 [Same as parent volume.] ✓ *See RV*

8. Whenever said fish and game commission shall have made any orders, rules or regulations for the carrying out of the powers granted to it under this act, the same shall take effect and be in force from and after the publication and posting of notice of said orders, rules and regulations as required by the fish and game laws.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be punishable as provided by law.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R. C. M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd.

Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963.

Amendment

The 1963 amendment deleted a former paragraph 8, for text of which see parent volume; and redesignated former paragraph 9 as 8.

26-302. Big game hunters to wear colored garments. It shall be unlawful for any person to hunt any of the big game animals in this state under any of the provisions of the laws of this state without such person wearing as an exterior garment, a cap or hat, shirt jacket, coat or sweater of a bright red, orange or yellow color.

History: En. Sec. 1, Ch. 74, L. 1937; amd. Sec. 1, Ch. 12, L. 1961.

Repealing Clause

Section 2 of Ch. 12, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1961 amendment inserted the words "as an exterior garment" and the words "orange or yellow" near the end of the section.

26-307. (3696) Waste of fish or game—hunting or fishing during closed season—killing more than one game animal—exceptions for bear.

(1) It shall be unlawful and a misdemeanor for any person responsible for the death of any game animal of this state, excepting grizzly, black and brown bear, to detach or remove from the carcass only the head.

hide, antlers, tusks or teeth, or any or all of aforesaid parts, or to waste any part of any game animal, game bird, or game fish suitable for food, or to abandon the carcass of any game animal in the field, except grizzly, black and brown bear, which need have removed and taken from the carcass only the head or the hide of such bear.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 15, Ch. 238, L. 1921; re-en. Sec. 3696, R. C. M. 1921; amd. Sec. 7, Ch. 77, L. 1923; amd. Sec. 16, Ch. 192, L. 1925; amd. Sec. 13, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1931; amd. Sec. 1, Ch. 160, L. 1941; amd. Sec. 1, Ch. 158, L. 1955; amd. Sec. 1, Ch. 40, L. 1961.

Amendment

The 1961 amendment inserted references to black and brown bear in two places in subd. (1) and added at the end of subd. (1) the words, "which need have removed and taken from the carcass only the head or the hide of such bear."

26-321. (3704) Closed and open season for furbearing animals. It shall hereafter be unlawful and a misdemeanor for any person to shoot, trap, kill, or capture, or cause to be shot, trapped, killed, or captured, or attempt to shoot, trap, kill, or capture any marten or sable, otter, mink, muskrat, beaver, fisher, Canada lynx or black-footed ferret until such time as the commission shall provide an open season on any marten or sable, otter, mink, muskrat, beaver, fisher, Canada lynx or black-footed ferret; provided, however, that when it is shown that muskrats or beaver are doing severe injury upon, or are a menace to the structures, canal banks or other works of an irrigation project or district, or stock water pond, any employee or resident landowner on such project or district may kill or trap or cause to be killed or trapped any muskrat or beaver upon or in menacing proximity to the structures, canal banks or other works of such project or district or stock water pond during the closed season on muskrats or beaver, after having secured from the state fish and game director a permit so to do, except that from June first to August thirty-first, both dates inclusive, of each year, no such permit shall be required. The furs and hides of such animals, legally taken during the open season, may be possessed, bought and sold at any time except as hereinafter provided.

Any person trapping marten during the open season thereon shall present all skins or pelts of marten so taken to the game warden residing in the district where the pelts were taken, and shall furnish an affidavit, giving his name, residence, license number, the date and place of capture, and the number of marten so taken, and if the warden is satisfied of the legal taking of the same, he shall attach a numbered metal tag to each skin covered by the affidavit; no charge shall be made for tags and the pelts so tagged may be bought, sold or transported at any time within the state of Montana, but no marten skin shall be exported in any manner from the state without the shipper first obtaining a shipping permit from the state fish and game director, or game warden, the application for which shall show the number on the metal tags attached to said marten skins.

Any person who shall receive or bring into from without the state any marten skin or skins with a numbered metal tag of another state or untagged marten skins coming from without the state where the state in which the marten skins were caught does not require that metal tags be

attached before shipment, shall report their arrival within ten (10) days to the state fish and game director and furnish an affidavit setting forth the number of skins, the date of receipt, the name and address of the person from whom procured, the manner or method of transportation into the state, and the numbers designated from the tags, and the name of the state so tagging the same, and it shall not be necessary for such skins to be retagged with a Montana tag nor any other fees paid therefor.

It shall be a misdemeanor, punishable as hereinafter provided, for any person to remove any tag from such skins or to buy, sell or transport untagged marten skins, except as provided in this act, or fail to have tags attached to marten skins as herein provided within twenty (20) days of the expiration date of the open season thereon.

It shall be unlawful and punishable, as in this act hereinafter provided, for any person at any time to wilfully destroy, open or leave open, or partially destroy a house of any muskrat or beaver except that this shall not prohibit trapping in the house of muskrats when the commission shall authorize such trapping.

Any person trapping furbearing animals or predatory animals for their pelts shall fasten a metal tag to all such traps bearing in legible English the name and address of the trapper, except that no tag shall be required on traps used by landowners trapping with permit on their own land, and irrigation ditch right-of-way contiguous to the land.

Any person violating any of the provisions hereof shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law.

History: En. Sec. 21, Ch. 238, L. 1921; re-en. Sec. 3704, R. C. M. 1921; amd. Sec. 14, Ch. 77, L. 1923; amd. Sec. 22, Ch. 192, L. 1925; amd. Sec. 17, Ch. 59, L. 1927; amd. Sec. 1, Ch. 95, L. 1943; amd. Sec. 8, Ch. 224, L. 1947; amd. Sec. 1, Ch. 132, L. 1955; amd. Sec. 1, Ch. 69, L. 1961.

Amendment

The 1961 amendment deleted the word "fox" both times it appeared in the first paragraph between the words "otter" and "mink" and inserted the words "Canada lynx or black-footed ferret" after "fisher" both times they appear in the first paragraph.

26-324. (3706) Penalty.

Operation and Effect

Where plaintiff lawfully killed a deer but failed to fill out the tag attached to his hunting license and attach it to the carcass, the deer was not unlawfully pos-

sessed and the game warden was without authority to seize and confiscate the carcass when he arrested plaintiff for failure to attach the tag. *Shipman v. Todd*, 131 M 365, 310 P 2d 300.

26-332. (3714) Method of catching fish—use of traps, seines and nets—restrictions concerning possession and sale of fish. Every person who takes or catches fish in any of the waters of this state except with hook and line held in hand or line and hook attached to rod or pole held in hand, or who takes or catches fish with hook baited with any poisonous substance or by means of the use of any poisonous substance, including fish berries, or who takes or catches fish by means of the use of fish traps, grab hooks, seines, nets, or other similar means for catching fish, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished as provided for in section 26-324, and the amendments thereto;

provided, however, that the Montana fish and game commission shall have the power, authority, and jurisdiction, to designate such waters within the state of Montana, wherein, in the judgment of the members of said commission, traps, seines, or nets, and rubber or spring propelled spears when employed by sportsmen swimming or submerged in the water, may be used for the taking of designated species of nongame fish and to close such waters so designated at the discretion of the commission, and to permit the taking of black bass in Flathead Lake, the taking of all fish by said means in said waters when so designated to be done under such rules and regulations as said commission may prescribe with reference thereto, and under the supervision of said commission, and all such fish so taken may be possessed and sold in such manner and under such restrictions as said commission may direct, all fish other than those herein designated so taken under said rules and regulations when prescribed by said commission, shall be returned uninjured to the waters from which they were taken.

History: En. Sec. 22, Ch. 173, L. 1917; re-en. Sec. 3714, R. C. M. 1921; amd. Sec. 16, Sec. 77, L. 1923; amd. Sec. 25, Ch. 192, L. 1925; amd. Sec. 18, Ch. 59, L. 1927; amd. Sec. 1, Ch. 44, L. 1959.

Amendment

The 1959 amendment added the phrase "and rubber or spring propelled spears when employed by sportsmen swimming or submerged in the water" following the words "or nets," in the proviso; added the words "designated species of" preced-

ing the words "nongame fish," and deleted the phrase "and Dolly Varden trout."

Repealing Clause

Section 2 of Ch. 44, L. 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 44, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved February 26, 1959.

CHAPTER 4—BEAVER—TRAPPING—LICENSE—PROTECTION

Section 26-401. Protection of beaver—permits and fee—tagging, importing and exporting of skins—expiration of permit—penalty for violation.

26-401. (3722) Protection of beaver—permits and fee—tagging, importing and exporting of skins—expiration of permit—penalty for violation. No person shall take, trap, shoot, kill, capture or attempt to take, trap, shoot, kill or capture, or in any way destroy any beaver in the state of Montana, or possess, buy, sell, ship or transport within or without the state, or cause the same to be done, any beaver or any part thereof including skins or hides and castors whether taken within or coming from without the state, except as hereinafter permitted.

Whenever beaver have increased in number to such an extent that in the judgment of the state fish and game commission the number of such beaver should be reduced, the commission shall have the authority to declare an open season on beaver under such rules and regulations as it shall prescribe; provided, however, that nothing herein contained shall authorize trapping on privately owned or leased lands, except with the approval of the landowner or lessee, or as hereinafter provided.

The state fish and game director may issue a permit to any bona fide owner or lessee of real estate which is being actually and materially damaged by beaver, to trap beaver on his own or leased premises only,

and provided that the director shall, when issuing the permit mentioned, designate therein the maximum number of beaver that may be trapped under such permit. The fee for such permit shall be five dollars (\$5.00). All applications for beaver permits shall be filed with the state fish and game director, between the dates of May first and September thirtieth of each year. The term "premises" shall be construed to include any irrigation ditch or right of way appurtenant to the land for which said license or permit is issued.

That the state fish and game director shall in person or, by warden, examine the premises and investigate the alleged damage by beaver before issuing a license or permit.

Any person trapping beaver under a license or permit of the state fish and game director shall properly care for all skins of beaver taken thereunder and as soon as cured shall send to the state fish and game warden residing in this county, or in event of such warden being absent or unable to act, then to the nearest warden from the place of the trapper's residence, and send to such officer an affidavit giving his name, residence, license or permit number, the date and place of capture, with the number so captured, together with fifty cents (50¢) for each skin, and if such officer is satisfied of the legal taking of the same, he shall thereupon immediately forward such affidavit with the money, and a report, to the state fish and game director; and upon the receipt thereof the state fish and game director shall forward to such warden numbered metal tags sufficient in number for one to be attached to each skin covered by the affidavit; upon receipt of such tags the warden shall so attach them to the skins.

Any person who shall receive or bring into from without the state any beaver skin or skins duly tagged with a distinctive numbered metal tag of another state, shall report their arrival within ten (10) days to the state fish and game director and furnish an affidavit setting forth the number of skins, the date of receipt, the name and address of the person from whom procured, the manner or method of transportation into the state, and the numbers designated on the tags, and the name of the state so tagging the same, and the same shall be accompanied by a fee of fifty cents (50¢), and it shall not be necessary for such skins to be re-tagged with a Montana tag, nor any other fees paid therefor.

The state fish and game director shall keep a record of all skins so reported.

Each metal tag shall remain attached to the beaver skin to which it was originally affixed until it is dressed and manufactured into an article of commerce, or it shall accompany any skin shipped or transported out of the state. It shall be a misdemeanor, punishable as hereinafter provided, to remove a tag from such skins, to duplicate or reproduce such tags for fraudulent purposes or use contrary to the provisions of this act, or to misuse any tag detached from the skin to which it was originally attached.

Beaver skins taken within the state under permit, and those coming from without the state, tagged as herein provided may be possessed,

bought, sold or transported at any time within the state of Montana, but no beaver skin or skins may be exported in any manner from the state without the shipper first obtaining an export or shipping permit from the state fish and game director, which may be issued upon application showing the kind and number of the metal tags on said skins and the payment of a fee of sixty cents (60¢) for the permit for each shipment.

Any package offered for transportation from the state which contains a beaver skin or skins shall be clearly marked on the outside thereof with the names and addresses of the consignor and consignee, the number and kind of skins contained therein, and the number of the shipping permit.

Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished as provided by section 26-324. Any beaver skin or skins taken or found in this state or which have been shipped out of this state except as specifically permitted by this section are being hereby declared contraband and shall be seized by the state fish and game director, warden or other officer authorized to enforce the provisions of this act. All skins so seized shall be marked or tagged for identification and sold by the state fish and game director at public auction in the state of Montana, after advertising at least fifteen (15) days prior to the date of sale, and the proceeds therefrom turned into the state treasury to be credited to the fish and game fund.

Beaver trapping permits issued under the provisions of this act shall expire June first of each year and all beaver skins taken thereunder and not reported and tagged according to the provisions of this section prior to July first following, shall be subject to seizure and sale as herein provided.

History: En. Sec. 38, Ch. 173, L. 1917; amd. Sec. 1, Ch. 197, L. 1919; re-en. Sec. 3722, R. C. M. 1921; amd. Sec. 17, Ch. 77, L. 1923; amd. Sec. 19, Ch. 59, L. 1927; amd. Sec. 1, Ch. 167, L. 1935; amd. Sec. 15, Ch. 224, L. 1947; amd. Sec. 1, Ch. 153, L. 1953; amd. Sec. 1, Ch. 24, L. 1957.

Amendment

The 1957 amendment in the third paragraph decreased the permit fee from \$10 to \$5; deleted the words "for ten (10) or less number of beaver and one dollar (\$1.00) per beaver for any number in excess of ten (10)" which appeared immediately after "five dollars (\$5.00)"; de-

leted from the end of the fifth paragraph the words "and shall receive from the owner ten cents (10c) for each skin so tagged by him, the same to be for his services"; deleted a former 6th paragraph which read "A record of tags so issued shall be kept in the office of the state fish and game warden" and in the last paragraph substituted "June" for "May" and "July" for "June."

Repealing Clause

Section 2 of Ch. 24, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 5—PROTECTION OF CERTAIN WILD BIRDS—SALE OF CONFISCATED BIRDS AND ANIMALS

- Section 26-510. Special wild turkey tags—fee.
 26-511. Tagging of turkey.
 26-512. Penalty for violation.

26-503. (3725) Possession of unlawfully killed animals, etc.

Operation and Effect

Section 26-110 has reference only to what the legislature denounced as unlawful possession under this section, and for

which the accused could be prosecuted for unlawful possession. *Shipman v. Todd*, 131 M 365, 310 P 2d 300, 302.

26-506. (3726) Sale of confiscated birds and animals.**References**

Cited or applied in *Shipman v. Todd*, 131 M 365, 310 P 2d 300, 303 (dissenting opinion).

26-508. (3728) Disposition of proceeds of sale.**Liability of Game Warden for Seizure of Carcass**

This section has reference only to a case wherein the officer has a right to seize the property, and it offered no defense to

a game warden who confiscated the carcass of a deer which was properly killed in open territory by one with a license. *Shipman v. Todd*, 131 M 365, 310 P 2d 300, 302.

26-510. Special wild turkey tags—fee. The state fish and game commission may issue wild turkey tags to the holder of a valid Class A-1, Class B-1, or Class B-2 license. Each tag shall authorize the holder to hunt, shoot, capture or possess one (1) wild turkey during such times and such places as the commission shall authorize an open season on wild turkey.

The fee for a wild turkey tag shall be two dollars (\$2.00). Turkey tags shall be issued either by a drawing system, or in unlimited number according to such rules and regulations as the commission shall prescribe.

History: En. Sec. 1, Ch. 35, L. 1959; amd. Sec. 3, Ch. 148, L. 1963.

for penalties; and repealing all acts and parts of acts in conflict herewith.

Title of Act

An act providing that the state fish and game commission may issue wild turkey tags to holders of valid Class A, Class B-1, Class B-2 licenses; providing for a two dollar (\$2.00) fee; providing for the tagging of said turkeys; providing

Amendment

The 1963 amendment substituted "Class A-1" for "Class A" in the first sentence.

Effective Date

Section 4 of Ch. 148, Laws 1963 read "This act shall be effective May 1, 1964."

26-511. Tagging of turkey. Every person who shall take or kill any turkey shall immediately thereafter attach to the leg of said turkey the proper tag which has been validated by the holder thereof by complying with instructions on said tag.

History: En. Sec. 2, Ch. 35, L. 1959.

26-512. Penalty for violation. Any person who shall kill, capture or possess any wild turkey by authority of any turkey tag or permit and shall fail or neglect to attach his tag to the turkey, or shall fail to validate his tag by filling out or punch marking the tag as required and to keep the tag attached while the same is possessed by him, shall be guilty of a misdemeanor and upon conviction shall be punished as provided for in section 26-324 of the Revised Codes of Montana, 1947, as amended.

History: En. Sec. 3, Ch. 35, L. 1959.

Repealing Clause

Section 4 of Ch. 35, Laws 1959 repealed all acts and parts of acts in conflict therewith.

CHAPTER 7—SHIPMENT OF ANIMALS FROM STATE

Section 26-701. Removal of animals or parts of animals from the state unlawful, when illegally taken.

26-701. (3730) Removal of animals or parts of animals from the state unlawful, when illegally taken. It is hereby declared to be unlawful and a misdemeanor, punishable as provided by section 26-324, for any person or persons, to possess, ship or take out of the state any illegally taken game and non-game birds, fish, game animals, furbearing animals or the skins of furbearing animals, or any parts thereof, whether taken within or coming from without the state.

History: En. Sec. 51, Ch. 173, L. 1917; re-en. Sec. 3730, R. C. M. 1921; amd. Sec. 19, Ch. 77, L. 1923; amd. Sec. 22, Ch. 59, L. 1927; amd. Sec. 19, Ch. 224, L. 1947; amd. Sec. 1, Ch. 38, L. 1963.

Amendment

The 1963 amendment inserted "possess" before "ship or take out"; substituted "any illegally taken" for "any of the" after "take out of the state"; deleted the words "which are mentioned in this act" after "or any parts thereof"; and deleted from

the end of the section the words "except the same be done in the manner provided for by sections 26-701, 26-702 and 26-703."

Repealing Clause

Section 2 of Ch. 38, Laws 1963 read "Sections 26-702, 26-703, and 26-707, Revised Codes of Montana, 1947, are repealed."

Effective Date

Section 3 of Ch. 38, Laws 1963 read "This act is effective May 1, 1963."

26-702, 26-703. (3731, 3732) Repealed.

Repeal

These sections (Secs. 52, 53, Ch. 173, L. 1917; Secs. 20, 21, Ch. 77, L. 1923; Secs. 23, 24, Ch. 59, L. 1927; Sec. 1, Ch. 226, L. 1943; Sec. 1, Ch. 102, L. 1945;

Sec. 1, Ch. 182, L. 1947; Sec. 1, Ch. 116, L. 1955), relating to permits for removal from the state of game animals, birds, and fish, were repealed by Sec. 2, Ch. 38, Laws 1963.

26-707. (3736) Repealed.

Repeal

This section (Sec. 57, Ch. 173, L. 1917; Sec. 27, Ch. 59, L. 1927; Sec. 1, Ch. 171,

L. 1943), relating to the fee for shipping permits, was repealed by Sec. 2, Ch. 38, Laws 1963.

CHAPTER 8—MISCELLANEOUS PROHIBITIONS

Section 26-811. Contests based on size of game animals unlawful.

26-811. Contests based on size of game animals unlawful. Except as provided in this section, it is unlawful for any person, as defined in section 26-201, Revised Codes of Montana, 1947, to conduct or sponsor in any manner a contest in which a prize is offered to a person who kills a game animal possessing the largest antlers or horns, carrying the greatest weight, having the longest body, or any similar contest based upon the size or weight of a game animal or part of a game animal. This act does not apply to recognition given by the nationally established and recognized Boone and Crockett trophy institute. A person who violates this section is guilty of a misdemeanor and is punishable according to the provisions of section 26-324, Revised Codes of Montana, 1947.

History: En. Sec. 1, Ch. 133, L. 1961.

Title of Act

An act relating to game animals; out-

lawing contests which are based upon the size or weight of a game animal or part of a game animal; providing a penalty.

CHAPTER 9—OUTFITTER'S LICENSE—TAXIDERMIST'S LICENSE

Section 26-907. Taxidermist's license—fee—penalty for violations.

26-907. (3751) Taxidermist's license — fee — penalty for violations. Any person who shall engage in, or who is at the present time engaged in conducting any taxidermist business, as the term is generally understood, or any person who conducts a business for the purpose of mounting, preserving or preparing any of the dead bodies of any birds, or animals, or any part thereof, mentioned in the game laws of this state, must first obtain from the state fish and game director a taxidermist's license and shall pay an annual license fee of fifteen dollars (\$15.00) therefor. Such person shall, keep a written record of all the articles of game, the kind and number of each, by whom owned, license number, and the residence of owner, also of all the articles of game shipped, and to whom and where shipped. The above record shall be kept for at least a period of one (1) year and open to inspection by any state game warden at any reasonable time. Any person violating the provisions hereof shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by section 26-324. In all cases of conviction of violation of this act the license of the person convicted shall be revoked.

History: En. Sec. 72, Ch. 173, L. 1917; re-en. Sec. 3751, R. C. M. 1921; amd. Sec. 24, Ch. 77, L. 1923; amd. Sec. 26, Ch. 224, L. 1947; amd. Sec. 1, Ch. 12, L. 1959.

Amendment

The 1959 amendment substituted the second and third sentences for one which read "Such person shall, on the first day of each month, make a written report to the state fish and game director, of all the articles of game, the kind and number of each, by whom owned, and the resi-

dence of owner, received during the past month, also of all the articles of game shipped, and to whom and where shipped, during the last month; also the amount and kind of each on hand on the last day of the month, and by whom owned and owners address."

Repealing Clause

Section 2 of Ch. 12, Laws 1959 repealed all acts and parts of acts in conflict therewith.

CHAPTER 11—GAME PRESERVES, MIGRATORY BIRD RESERVATIONS

26-1103. (3764) Repealed.

Repeal

This section (Sec. 1, Ch. 87, L. 1911; amd. Sec. 1, Ch. 124, L. 1915; re-en. Sec. 83, Ch. 173, L. 1917; amd. Sec. 1, Ch. 138,

L. 1919; amd. Sec. 1, Ch. 80, L. 1925; amd. Sec. 29, Ch. 224, L. 1947), relating to the Gallatin preserve, was repealed by Sec. 1, Ch. 54, Laws 1957.

26-1104. (3765) Repealed.

Repeal

This section (Sec. 83, Ch. 173, L. 1917; amd. Sec. 1, Ch. 75, L. 1933), relating to

the Snowy Mountain preserve, was repealed by Sec. 1, Ch. 54, Laws 1957.

26-1106. (3767) Repealed.

Repeal

This section (Sec. 83, Ch. 173, L. 1917; amd. Sec. 1, Ch. 3, L. 1949), relating to

the Powder river game preserve, was repealed by Sec. 1, Ch. 54, Laws 1957.

26-1110. (3769) Repealed.

Repeal

This section (Sec. 83, Ch. 173, L. 1917; amd. Sec. 30, Ch. 224, L. 1947), relating

to the Twin Buttes game preserve, was repealed by Sec. 1, Ch. 54, Laws 1957.

26-1112. (3771) Repealed.**Repeal**

This section (Sec. 1, Ch. 109, L. 1917; re-en. Sec. 83, Ch. 173, L. 1917), relating

to the South Moccasin mountain game preserve, was repealed by Sec. 1, Ch. 54, Laws 1957.

26-1114. (3773) Repealed.**Repeal**

This section (Sec. 1, Ch. 114, L. 1921; amd. Sec. 31, Ch. 224, L. 1947), relating to

the Blackleaf game and bird preserve, was repealed by Sec. 1, Ch. 54, Laws 1957.

TITLE 27—FOOD AND DRUGS

- Chapter 3. State board of food distributors—regulation of food stores and food stuffs, 27-310, 27-313.
4. Supervision of milk industry—state milk control board, 27-403 to 27-407, 27-409, 27-410, 27-414, 27-416, 27-417, 27-426 to 27-429.

CHAPTER 3—STATE BOARD OF FOOD DISTRIBUTORS—REGULATION OF FOOD STORES AND FOOD STUFFS

- Section 27-310. Food stores—permits, offenses for failure to obtain.
- 27-313. Fees to be deposited with treasurer—payments to be made.

27-310. Food stores—permits, offenses for failure to obtain. The state board of food distributors shall require and provide for the annual registration and licensing of every food store now or hereafter doing business within the state. Upon the payment of a fee of five dollars (\$5.00), the board shall issue a license and provide the insignia designating such store a "certified food store" by the state board of food distributors, to such persons as may be qualified by law to conduct a food store provided such license shall be exposed in a conspicuous place in the food store for which it is issued, and shall expire on the thirtieth day of June following the date of issue. It shall be unlawful for any person to conduct a food store unless such license has been issued to him by the board.

History: En. Sec. 10, Ch. 49, L. 1939;
amd. Sec. 1, Ch. 93, L. 1957.

Amendment

The 1957 amendment increased the license fee for a certified food store from \$2.00 to \$5.00.

Repealing Clause

Section 2 of Ch. 93, Laws 1957 repealed all acts and parts of acts in conflict therewith.

27-313. Fees to be deposited with treasurer—payments to be made. All fees received by the state board of food distributors under this act shall be deposited with the state treasurer and deposited in the earmarked revenue fund for the use of the board. No expenses shall be incurred by said board in excess of the revenue derived from such fees.

History: En. Sec. 13, Ch. 49, L. 1939;
amd. Sec. 240, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "deposited with the state treasurer and deposited in the earmarked revenue fund for the use of the board" at the end of the first sentence for "deposited with treasurer of the board"; and deleted second, fourth, fifth and sixth sentences which read: "In enforcing any and all laws affecting or pertaining to food stores licensed herein, all fines paid under the provisions of this act or in connection with the enforcement of this act or any other act concerning food stores or in connection with the enforcement thereof,

shall be paid to the credit of the common school fund of the state of Montana, provided that no salary or expenses of the board of food distributors shall be paid out of the state treasury" and "All expenditures of said board and all expenses necessarily incurred thereby in exercise of its powers or the performance of its duties under this act, shall be paid out of said fund in hands of treasurer of the board. Payments out of said fund shall be made only by warrant or order on said funds drawn by the secretary and countersigned by the president of the state board of food distributors. The treasurer shall give such bond as the board may from time to time require."

CHAPTER 4—SUPERVISION OF MILK INDUSTRY—STATE MILK CONTROL BOARD

- Section 27-403. Definitions.
 27-404. Milk control board.
 27-405. General powers of the milk control board.
 27-406. Markets.
 27-407. Orders fixing minimum prices.
 27-409. Licenses—disposition of income.
 27-410. Application for licenses.
 27-414. Rules of fair trade practices.
 27-416. Reports of dealers—accounting system—records.
 27-417. Disposition of fines.
 27-426. Bonds required of distributors—amounts—forms and conditions.
 27-427. Local advisory boards.
 27-428. Judicial review of orders.
 27-429. Service of process upon board.

27-401. Declaration of policy relating to milk.

Purpose of Act

Since the Milk Control Act (27-401 et seq.) is aimed at activity which is injurious to health it may be enforced by injunction under section 27-424. *Montana Milk Control Board v. Rehberg*, — M —, 376 P 2d 508, 517.

(k) of this section, contemplates a minimum price at which milk can be sold in view of surrounding circumstances. *Montana Milk Control Board v. Rehberg*, — M —, 376 P 2d 508, 515.

References

Cited in *Montana Milk Control Board v. Maier*, — M —, 367 P 2d 305, 306.

Reasonable Profit

Reasonable profit, as used in subsection

27-402. General purpose.

Minimum Prices

The means selected to attain the object set forth in this section is a procedure set forth in section 27-406 whereby the milk control board is empowered to establish marketing areas in the state and to pre-

scribe and enforce minimum producer, wholesale, and retail prices in such areas pursuant to the provisions of the Milk Control Act (27-401 et seq.). *Montana Milk Control Board v. Rehberg*, — M —, 376 P 2d 508, 513.

27-403. Definitions. As used in this act, unless the context otherwise requires, "board" means the state agency created by this act, to be known as the Montana milk control board.

"Person" means any person, firm, corporation or association.

"Producer" means any person who produces milk for fluid consumption within the state, selling same at wholesale to a distributor.

"Distributor" means any person purchasing milk and distributing same for fluid consumption within the state. Said term, however, excludes all persons purchasing milk from a dealer licensed under this act, for resale over the counter at retail, or for consumption on the premises.

"Producer-distributor" means any person both producing and distributing milk for fluid consumption within the state.

"Dealer" means any producer, distributor, or producer-distributor.

"Licensee" means any person who holds a license from the board.

"Association" means any organized group of dealers in a community or marketing area which has been constituted under regulations satisfactory to the board.

"Market" means any area of the state designated by the board as a natural marketing area.

"Consumer" means any person or any agency, other than a dealer, who purchases milk for consumption or use.

"Milk" means fluid milk and cream sold for consumption as such, and for the purposes of this act shall be classified as follows:

Class I milk shall include all bottled or packaged milk, raw, pasteurized and homogenized, low fat, buttermilk and chocolate milk.

Class II milk shall include whipping cream, coffee cream, half-and-half, and skim milk.

The board shall have power and authority to assign fluid milk products hereafter developed to the class which in its discretion it determines to be proper.

History: En. Sec. 3, Ch. 204, L. 1939; two or more of the same" and added all
amd. Sec. 1, Ch. 192, L. 1959. that part of the definition of milk relating to its classification.

Amendment

The 1959 amendment in the definition of market substituted "any area" for "any city, town, or community of the state or

References

Montana Milk Control Board v. Maier,
— M —, 367 P 2d 305, 306.

27-404. Milk control board. There is hereby constituted a milk control board to consist of five (5) members, who shall be appointed by the governor, with the consent of the senate, for terms of office as herein provided, and with the following qualifications: No appointee shall be connected in any way with the production, processing, distribution, or wholesale or retail sale of milk or dairy products in any manner whatsoever; no appointee shall have held elective or appointive public office during the period of two years immediately preceding his appointment and no appointee shall hold any other public office, either elective or appointive, during his term of office as a member of the milk control board; and not more than three (3) members of the said milk control board shall, at the time of appointment or thereafter during their respective terms of office, be members of the same political party or residents of the same congressional district.

The members of said milk control board shall be appointed within thirty (30) days after passage and approval of this act. The term of office of one member shall expire on July 1, 1960; the term of office of one member shall expire on July 1, 1961; the term of office of one member shall expire on July 1, 1962; the term of office of one member shall expire on July 1, 1963; the term of office of one member shall expire on July 1, 1964; and each succeeding member shall hold his office for a term of five years and until his successor shall have been appointed and qualified. Any vacancy shall be filled by appointment by the governor, with the consent of the senate as hereinbefore provided, for the unexpired term.

Consumer members of the existing milk control board at the time of the passage of this act may be reappointed by the governor at his discretion for any of the terms above mentioned and persons whom he shall appoint for those initial terms expiring in 1960, 1961, and 1962 shall be eligible for reappointment to full five year terms on the board; provided, however, that after 1962 no member other than one who is appointed to fill a vacancy shall be appointed to succeed himself on said board.

Three (3) members of the board shall constitute a quorum for the regular transaction of business.

The board shall choose one (1) of its own members as the chairman, who shall hold office as chairman for one year; provided, election as chairman shall not interfere with that member's right to vote on all matters before the board.

Each member of the board shall receive twenty-five dollars (\$25.00) per diem for each day actually spent in the performance of his official duties, plus his actual necessary traveling and other expenses in going to, attending and returning from meetings of the board and his actual and necessary traveling and other expenses incurred in the discharge of such duties as may be requested of him by a majority vote of the board, but in no event shall a member's per diem payments exceed fifteen hundred dollars (\$1500.00) in any one year.

Each member of the board shall give bond conditioned for the faithful performance of his duties in the sum of five thousand dollars (\$5000.00).

The board may employ necessary assistants and appoint agents and instrumentalities but all expenditure under this act shall be paid from the receipts hereunder.

The board shall have the power and it shall be its duty to designate an executive secretary who shall serve under the direction and at the pleasure of the board and who shall have charge of the administration of the board's orders, rules, and regulations, and who shall also serve as financial officer of the board and who shall be authorized to accept or receive money paid or to be paid to the board, either as license fees or fines as provided by this act. Such person shall, before he enters upon the discharge of his duties, execute and file a bond, in such amount as may be fixed by the board, as may be provided by law for public officers.

Meetings of the board shall be had at least every sixty (60) days at the call of the chairman or a majority of the board. The salary of the secretary is to be fixed by the board and the state board of examiners. The board shall so enforce the act that there shall be no discrimination against any dealer or consumer.

History: En. Sec. 4, Ch. 204, L. 1939; amd. Sec. 1, Ch. 249, L. 1957; amd. Sec. 2, Ch. 192, L. 1959.

after its passage and approval. Approved March 13, 1957.

Amendments

The 1957 amendment made numerous changes and additions in this section. For section prior to amendment see parent volume.

The 1959 amendment completely rewrote this section relating to the composition of the milk control board.

Effective Date

Section 2 of Ch. 249, Laws 1957 provided the act should be in effect from and

Police Power

Since the legislature of Montana has acted in exercise of its police power to supervise the milk industry, Art. 15, sec. 20, Montana constitution relating to price-fixing is inapplicable. *Montana Milk Control Board v. Rehberg*, — M —, 376 P 2d 508, 514.

References

Montana Milk Control Board v. Maier, — M —, 367 P 2d 305, 306.

27-405. General powers of the milk control board. (1) The board is hereby vested with the powers, and it shall be its duty to supervise, regulate and control the fluid milk industry of the state of Montana, including the production, transportation, processing, storage, distribution

and sale of milk in the state of Montana for consumption within the state, providing however, that nothing contained in this act shall be construed to abrogate or affect the status, force or operation of any provision of public health laws or the law under which the Montana livestock sanitary board is constituted together with the Montana livestock sanitary board regulations or county board of health regulations, or municipal ordinances for the promotion or protection of the public health, but the board shall have the power to cooperate with the state board of health, the Montana livestock sanitary board or any county or city board of health or the state department of agriculture and industry in enforcing the provisions of this act.

(2) The board shall have the power to investigate all matters pertaining to the production, transportation, processing, storage, distribution and sale of milk in the state of Montana and to conduct hearings upon any subject pertinent to the administration of this act. The board shall have the power to subpoena milk dealers, their records, books and accounts, and any other person from whom information may be desired or deemed necessary to carry out the purposes and intent of this act, and may issue commissions to take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the milk control board at its offices in the state capitol, provided at least ten (10) days notice is given to the proposed witness.

(3) It shall be the duty of any sheriff of any county of the state, when requested to do so by the board, to execute any summons, citations or notice which the board may cause to be issued, for which such sheriff shall be authorized to charge the same fee against the funds provided for the milk control board as he might lawfully charge for the same service of such a document if issued from any district court of the state of Montana. Any person, other than a dealer who is cited for violation of the provisions of this act, or cited to show cause why his license should not be revoked, shall receive for his attendance before the milk control board or its duly designated agent the same compensation as is provided for a witness subpoenaed to appear before the district court, which shall be charged against the funds provided for the operation of the milk control board.

(4) Any duly designated agent of the board may administer oath to witnesses, may call and give notice of price hearings when the board is not in session and may conduct hearings or investigations and any such duly designated agent of the board may sign and issue subpoenas requiring witnesses to appear before him or the board, and in addition to the manner provided above for the execution of subpoenas, summons and citations issued by the milk control board to witnesses or dealers, the board, through its designated agent shall have the power to serve said subpoenas, summons or citations upon any person by sending a copy of such subpoena, summons or citation, through the United States mail, postage prepaid, which said mail shall be registered with return receipt attached and such service shall be complete when said registered mail shall be delivered to said person and such receipt returned to the board or its designated agent, signed by the person sought to be summoned,

subpoenaed, or cited. Obedience to a subpoena, summons or citation, issued by the board or any person authorized and designated by the board to issue said subpoena, summons or citation, may be enforced by application to any judge of the district court of the county in which such subpoena, summons or citation was issued or to any judge of the district court of the county in which such person subpoenaed, summoned or cited resides and said court shall order compliance with said subpoena, summons or citation and upon the failure of the witness to attend, to testify, or to produce such books or papers or records as the board may have commanded, such witness may be punished for contempt of court as for failure to obey a subpoena issued by or to testify in a case pending before said court.

(5) The board may act as mediator or arbitrator to settle any controversy or issue pertaining to fluid milk among or between producers, distributors, producer-distributor and/or consumers.

The operation and effect of any provision of this act, conferring a general power upon the milk control board, shall not impair or limit any specific power or powers granted to the milk control board by this act.

History: En. Sec. 5, Ch. 204, L. 1939; amd. Sec. 3, Ch. 192, L. 1959.

power. *Montana Milk Control Board v. Rehberg*, — M —, 376 P 2d 508, 514, 515.

Amendment

The 1959 amendment in subd. (1) substituted "department of agriculture and industry" for "department of agriculture, labor and industries"; added all that part of subd. (2) beginning with the words "or who cannot otherwise appear"; inserted the words "may call and give notice of price hearings when the board is not in session" near the beginning of subd. (4), and substituted the end of that subdivision relating to enforcement of compliance with a summons, citation, or subpoena, for the former provision, for text of which see the parent volume.

Action for Unpaid Fees

Under section 27-424 the milk control board could maintain an action against a dairy operator for unpaid license and assessment fees imposed upon him by the board between 1958 and 1960 without putting the dairy operator out of business by using the provisions of section 27-411 or subjecting him to the penal provisions of section 27-422. *Montana Milk Control Board v. Maier*, — M —, 367 P 2d 305, 307.

Transportation Costs

Milk control board could give producers the option to share in the cost of moving their milk to outside marketing areas. *Heimbichner v. Montana Milk Control Board*, 134 M 366, 332 P 2d 922, 924.

Constitutionality

The price-fixing provisions of this section do not offend due process and do not unconstitutionally delegate legislative

27-406. Markets. Pursuant to the declaration of policy relating to milk set forth in section 27-401 of the Revised Codes of Montana of 1947, the milk control board is vested with the duty and authority to designate natural marketing areas which shall together embrace all the geographical area of the state and to prescribe and enforce minimum producer, wholesale, and retail prices in such areas in the manner set forth in this act; provided, that at all times there shall not be less than five (5) natural marketing areas in the state.

(a) Natural marketing areas shall be established forthwith throughout the state by the board; provided that before any proposed natural marketing area is established the board, after notice of at least thirty (30) days, shall hold a hearing or hearings, at a place or places within the proposed area, at which producers and distributors doing business within

said proposed natural marketing area, who are licensed by the Montana livestock sanitary board, and the consuming public may present evidence and testify; and in the event the hearing or hearings make it evident to a majority of the board that the establishment of such proposed natural marketing area is in the public interest, the board shall make findings and conclusions and proceed to establish such natural marketing area.

(b) The board shall have the power, from time to time and at its discretion, to adjust and alter the boundaries of natural marketing areas after they have been established, if after a hearing upon notice of at least thirty (30) days to all interested parties it finds and orders such adjustment to be in the public interest.

(c) All previously established marketing areas and all price schedules, rules and regulations issued and promulgated by any previously existing milk control board in this state at the time of passage of this act are in force and effect, are hereby declared to be and remain in force and effect until altered or rescinded in the manner provided by this act.

(d) The board shall at all times maintain current information on quantities of surplus Grade A milk available in the various marketing areas throughout the state, and such information shall be available to all interested parties on request.

History: En. Sec. 6, Ch. 204, L. 1939; amd. Sec. 4, Ch. 192, L. 1959.

Amendment

The 1959 amendment completely rewrote this section. For section prior to amendment see parent volume.

Constitutionality

The price-fixing provisions of this section do not offend due process. *Montana Milk Control Board v. Rehberg*, — M —, 376 P 2d 508, 513.

Minimum Prices

The means selected to attain the object of the Milk Control Act set forth in section 27-402 is the procedure outlined in this section. *Montana Milk Control Board v. Rehberg*, — M —, 376 P 2d 508, 513.

References

Montana Milk Control Board v. Maier, — M —, 367 P 2d 305, 307.

27-407. Orders fixing minimum prices. Prior to the fixing of prices in any market the board shall conduct a public hearing and admit evidence under oath relative to the matters of its inquiry, at which hearing the consuming public shall be entitled to offer evidence and be heard the same as persons engaged in the milk industry. The board shall by means of such hearing or from facts within its own knowledge, investigate and determine what are reasonable costs and charges for producing, hauling, handling, processing, and/or other services performed in respect to milk and what prices for milk in the several localities and markets of the state, and under varying conditions, will best protect the milk industry in the state and insure a sufficient quantity of pure and wholesome milk to adults and minors in the state, and be most in the public interest.

The board shall take into consideration the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states, so that minimum prices which are fair and equitable to producers, distributors and consumers may result.

The board shall, at least ten (10) days prior to the date set for any public hearing on minimum prices, cause notice to be given to the consuming public and the milk industry of the specific factors which shall be taken into consideration in determining costs of production and distribution and of the actual dollars and cents costs of production and distribution which preliminary studies and investigations of auditors or accountants in its employment indicate will or should be shown at the hearing, so that all interested parties will have opportunity to be heard and to question or rebut such considerations as a matter of record.

If the board at any time proposes to base all or any part of any official order fixing minimum prices upon facts within its own knowledge, as distinguished from evidence which may be presented to it at a public hearing by the consuming public or the milk industry, the board shall, at least ten (10) days prior to the date set for any public hearing on minimum prices, cause notice to be given to the consuming public and the milk industry of the specific facts within its own knowledge which it will consider, so that all interested parties will have opportunity to be heard and to question or rebut such facts as a matter of record.

The board, after consideration of the evidence produced at such hearing, shall make written findings and conclusions and shall fix by official order:

(a) The minimum prices to be paid by the milk dealers to producers and others for milk. Each order fixing minimum prices shall classify milk by forms, classes, grades or uses as the board may deem advisable and shall specify the minimum prices therefor.

The milk produced in one natural marketing area and sold in another natural marketing area shall be paid for by a distributor or dealer in accordance with the pricing order of the area where produced at the price therein specified of the class or use in which it is ultimately used or sold.

No allowance for freight, other than freight for transportation of milk from the farm to plant, shall be charged to a producer by a distributor or dealer unless it is found and ordered by the board, after notice and hearing in the manner hereinbefore specified, that such an additional freight allowance is necessary to permit the movement of milk in the public interest.

All milk purchased within a natural marketing area by a distributor shall be purchased on a uniform basis of either butterfat or hundred-weight. The basis to be used shall be established by the board after the producers and the distributors of the area have been consulted.

(b) The minimum wholesale prices to be charged for milk in its various forms, classes, grades, and uses when sold by distributors or producer-distributors to retail stores, restaurants, boarding houses, fraternities, sororities, confectioneries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

(c) The minimum retail prices to be charged for milk in its various forms, classes, grades and uses when sold by distributors, producer-distributors, and retail stores to consumers.

A minimum producer, wholesale or retail price to be charged for milk shall not be fixed higher than is necessary to cover the costs of ordinarily efficient and economical milk dealers, including a reasonable return upon necessary investment.

The board may, upon its own motion, or upon application in writing from any market, or from any party at interest, alter, revise or amend any official order theretofore made by the board provided that before making, revising, or amending any order fixing prices to be charged or paid for milk in any of its forms, classes, grades or uses, the board shall hold a public hearing on such matter in the same manner provided herein for the original fixing of prices.

History: En. Sec. 7, Ch. 204, L. 1939, amd. Sec. 5, Ch. 192, L. 1959.

Amendment

The 1959 amendment made numerous changes and rewrote this section. For section prior to amendment see parent volume.

Constitutionality

Since the legislature of Montana in enacting this statute acted in the exercise of its police power to supervise the milk industry, Art. 15, sec. 20, Montana constitution has no application. *Montana Milk Control Board v. Rehberg*, — M —, 376 P 2d 508, 514.

The price-fixing provisions of this section do not offend due process and do not unconstitutionally delegate legislative power. *Montana Milk Control Board v. Rehberg*, — M —, 376 P 2d 508, 514, 515.

Authority for Institution of Proceedings

Petition disclosed that "unanimous consent of all members of the board" had been had prior to the institution of the proceeding as required by section 27-424, where the petition states that the execu-

tive secretary of the board "as such administrative officer, has the authority of said board to institute this action on their behalf under the provisions of R. C. M. 1947, § 27-424." *State ex rel. Montana Milk Control Board v. District Court*, 138 M 179, 355 P 2d 664, 666.

Facts to be Noticed by Board

If the milk control board proposes to base any part of an official order fixing minimum prices upon facts within its own knowledge it must give notice of the specific facts which it will consider. *State ex rel. Montana Milk Control Board v. District Court*, 138 M 179, 355 P 2d 664, 669.

Retail Price

Where retail price charged for some of the milk is more than twice the price paid by the distributor to the producer there is a violation of the statute. *Heimbichner v. Montana Milk Control Board*, 134 M 366, 332 P 2d 922, 923.

References

Montana Milk Control Board v. Maier, — M —, 367 P 2d 305, 307.

DECISIONS UNDER FORMER LAW

Price to Schools

A complaint filed by the milk control board charging creamery with selling milk to public and private schools at less than price designated by its official order issued in 1957 failed to state a cause of action as the board had no

authority under the law as it existed prior to the 1959 amendment to regulate the price of milk sold to schools. *Montana Milk Control Board v. Community Creamery Co.*, 139 M 523, 366 P 2d 151, 153.

27-408. Licenses to producers, producer-distributors, and distributors.

Application of Section

License fee exacted by this section and section 27-409 applies to milk which is ultimately sold by a distributor outside an established market area. *Heimbichner v. Montana Milk Control Board*, 134 M 366, 332 P 2d 922, 924.

Collection of License Fees

Board may collect license fees based on the whole volume of milk sold by producer whether within a certain marketing area or anywhere else within the state of Montana. *Heimbichner v. Montana Milk Control Board*, 134 M 366, 332 P 2d 922, 925.

27-409. Licenses—disposition of income. No producer, producer-distributor, or distributor shall engage in the business of producing or selling milk subject to this act in this state without first having obtained a license from the Montana livestock sanitary board and without being licensed under this act by the milk control board. The annual fee for such license from the milk control board shall be two dollars (\$2.00), shall be due and payable on or before the first day of July, commencing in the year 1959 and shall be deposited by said board to the credit of the general fund.

In addition to said annual license fee, the board shall, in each year, on or before the first day of April, for the purpose of securing funds to administer and enforce this act, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) A fee of not more than five cents (5¢) per hundred weight on the total volume of all milk subject to this act produced and sold by a producer-distributor.

(b) A fee of not more than two and one-half cents (2½¢) per hundred weight on the total volume of all milk subject to this act sold by a producer.

(c) A fee of not more than two and one-half cents (2½¢) per hundred weight on the total volume of all milk subject to this act sold by a distributor, excepting that which is sold to another distributor.

Said assessment upon producer-distributors, producers, and distributors shall be paid quarterly on or before the fifteenth (15th) day of July, October, January and April of each year, commencing in July of 1959, and the amount of such assessment shall be computed by applying the fee designated by the board to the volume of milk sold in the calendar quarter immediately preceding.

Failure of any producer, producer-distributor, or distributor to pay said assessment when due shall constitute violation of this act and his license under this act shall thereupon automatically terminate and be null and void and of no effect. Reinstatement of a license so terminated shall be effected by payment of a delinquency fee equal to thirty per cent (30%) of the assessment which was due.

All assessments hereinbefore required to be paid shall be deposited by the milk control board in the earmarked revenue fund; and all costs of administering this act, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of this act, shall be paid out of milk control board moneys in such fund.

The rates of assessment above provided are maximum rates, and the board may, if it finds the costs of administering and enforcing this act can be derived from lower rates, fix the rates at a less amount on or before the first day of April in any year.

History: En. Sec. 9, Ch. 204, L. 1939; amd. Sec. 6, Ch. 192, L. 1959; amd. Sec. 157, Ch. 147, L. 1963.

Amendments

The 1959 amendment completely rewrote this section. For section prior to amendment see parent volume.

The 1963 amendment substituted "the earmarked revenue fund" for "a special fund which is hereby created and is designated the state milk control fund" in the fifth paragraph; and substituted "board moneys in such fund" for "said state milk control fund" at the end of the fifth paragraph.

Application of Section

License fee exacted by this section and section 27-408 applies to milk which is ultimately sold by a distributor outside an established market area. *Heimbichner v. Montana Milk Control Board*, 134 M 366, 332 P 2d 922, 924.

Collection of License Fees

Board may collect fees based on the

whole volume of milk sold by producer whether within a certain marketing area or anywhere else within the state of Montana. *Heimbichner v. Montana Milk Control Board*, 134 M 366, 332 P 2d 922, 925.

References

Montana Milk Control Board v. Maier, — M —, 367 P 2d 305, 306.

27-410. Application for licenses. An applicant for license to operate as a producer, producer-distributor, or distributor shall file a signed application upon a blank prepared under authority of the board, and an applicant shall state such facts concerning his circumstances and the nature of the business to be conducted as in the opinion of the board are necessary for the administration of this act. Such application shall certify the applicant to be the holder of all licenses required by the Montana livestock sanitary board for the conduct of his business and such application shall be accompanied by the license fee required to be paid.

History: En. Sec. 10, Ch. 204, L. 1939; amd. Sec. 7, Ch. 192, L. 1959.

graph, for text of which see parent volume.

Amendment

The 1959 amendment deleted the former third and fourth sentences of the first paragraph and the entire second para-

References

Montana Milk Control Board v. Maier, — M —, 367 P 2d 305, 306.

27-411. Declining, suspending and revoking licenses.**Action for Unpaid Fees**

Under section 27-424 the milk control board could maintain an action against a dairy operator for unpaid license and assessment fees imposed upon him by the board between 1958 and 1960 with-

out suspending or revoking right of dairy operator to do business by using the provisions of this section. *Montana Milk Control Board v. Maier*, — M —, 367 P 2d 305, 307.

27-412. Repealed.**Repeal**

This section (Sec. 12, Ch. 204, L. 1939), relating to the penalty for delinquency in

payment of license fee, was repealed by Sec. 14, Ch. 192, Laws 1959, effective March 9, 1959.

27-414. Rules of fair trade practices. In addition to the general and special powers heretofore set forth, the board shall have the power to make and formulate reasonable rules and regulations governing fair trade practices as they pertain to the transaction of business among licensees under this act and among licensees and the general public. Such reasonable rules and regulations governing fair trade practices shall contain, but shall not be limited to, provisions regarding the following methods of doing business which are hereby declared unfair, unlawful, and not in the public interest:

(a) The payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts by any person, whether in the form of money or otherwise.

(b) The giving of any milk, cream, dairy products, services, or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream business of any customer.

(c) The extension to certain customers of special prices or services not available to all customers who purchase milk of like quantity under like terms and conditions.

(d) The purchasing, processing, bottling, packaging, transporting, delivering or otherwise handling in any marketing area of any milk which is to be or is sold or otherwise disposed of at less than the minimum wholesale and minimum retail prices established by the board pursuant to this act.

(e) The payment of a less price than the applicable producer price established by the board pursuant to this act by a distributor to any producer for milk which is distributed to any person, including agencies of the federal, state or local government.

History: En. Sec. 14, Ch. 204, L. 1939; amd. Sec. 8, Ch. 192, L. 1959.

Milk Control Board v. Community Creamery Co., 139 M 523, 366 P 2d 151, 154.

Amendment

The 1959 amendment substituted "and among licensees and the general public" for "within that market" and added everything thereafter in this section.

Preparation of Rules and Regulations

This section was not intended to stand independently, but rather as a mandatory guide for the milk control board in preparing its rules and regulations. *Montana Milk Control Board v. Community Creamery Co.*, 139 M 523, 366 P 2d 151, 153.

Regulations promulgated by the milk control board governing unfair trade practices were invalid where they failed to encompass all five of the unfair methods of doing business which the legislature expressly stated should be contained in their rules and regulations. *Montana*

Validity of Rules and Regulations

Rules and regulations governing unfair trade practices adopted by the milk control board were invalid where they were not in accordance with the delegated authority of the board. *Montana Milk Control Board v. Community Creamery Co.*, 139 M 523, 366 P 2d 151, 154.

Violation of Fair Trade Practices

A violation of fair trade occurs when a party violates properly promulgated rules and regulations of the milk control board, enacted pursuant to this section. *Montana Milk Control Board v. Community Creamery Co.*, 139 M 523, 366 P 2d 151, 153.

References

Montana Milk Control Board v. Maier, — M —, 367 P 2d 305, 306.

27-416. Reports of dealers—accounting system—records. The board shall have the power to require all persons holding licenses under it to file with the board such reports at such reasonable or regular time as the board may require, showing such person's production, sale, or distribution of milk, and any information deemed by the board necessary which pertains to the production, sale or distribution of such milk, either under oath or otherwise, as the board may direct, and failure or refusal to file such reports when directed to do so by the board or its duly designated agent shall constitute grounds for the revocation of such person's license and shall constitute a violation for which such person may be fined as hereinafter provided, one or both, at the discretion of the board.

The board shall adopt a uniform system of accounting to be used by the distributor to account for the usage of all milk received by the distributor.

Every distributor and producer-distributor shall keep the following records:

(a) A record of all milk, cream or dairy products received, detailed as to location, names and addresses of suppliers, prices paid, and deductions or charges made, and the use to which such milk or cream was put.

(b) A record of the quantity of each kind of milk or dairy product manufactured and the quantity and price of milk or dairy products sold.

(c) A full and complete record of all milk, cream or dairy products sold, classified as to kind and grade, showing where sold, and the amount received therefor.

(d) A record of the wastage or loss of milk or dairy products.

(e) A record of the items of handling expense.

(f) A record of all refrigeration facilities rented or sold for storage purposes to any person, showing types and sizes of the same, the location of said facilities, and the original, or duplicate original, of all agreements covering rental charges therefor.

(g) A record of all conditional sales of equipment or other property, the location of said property, and the original, or duplicate original, of all conditional sales contracts pertaining thereto.

(h) A record of all moneys loaned to wholesale customers, the terms and conditions of said loans, and the original evidence of the indebtedness based on said loans.

(i) Such other records as the board may deem necessary for the proper enforcement of the act.

History: En. Sec. 16, Ch. 204, L. 1939; amd. Sec. 9, Ch. 192, L. 1959.

Amendment

The 1959 amendment added everything after the first paragraph in this section.

References

Montana Milk Control Board v. Maier, — M —, 367 P 2d 305, 306; Montana Milk Control Board v. Rehberg, — M —, 376 P 2d 508, 516.

27-417. Disposition of fines. All fines assessed in any court for violation of the provisions of this act shall be paid over by the court to the milk control board or its properly designated agent.

All fines received by the board shall be deposited with the state treasurer and shall be placed by him in the earmarked revenue fund. All such fines assessed for violations of this act, are hereby earmarked for the purposes of this act.

History: En. Sec. 17, Ch. 204, L. 1939; amd. Sec. 158, Ch. 147, L. 1963.

Amendment

The 1963 amendment rewrote the second paragraph of this section. For section prior to amendment, see parent volume.

27-419. Repealed.

Repeal

This section (Sec. 19, Ch. 204, L. 1939), relating to cooperative corporations, was

repealed by Sec. 14, Ch. 192, Laws 1959, effective March 9, 1959.

27-422. Violations made misdemeanors—penalties.

Action for Unpaid Fees

Under section 27-424 the milk control board could maintain an action against a dairy operator for unpaid license and assessment fees imposed upon him by the board between 1958 and 1960 without subjecting the dairy operator to penal provisions of this section. Montana

Milk Control Board v. Maier, — M —, 367 P 2d 305, 307.

Nuisance

A sale of milk at a price less than the minimum prescribed by the milk control board under section 27-407, being a violation of this section, is a nuisance which

may be enjoined by the board under section 27-424. *Montana Milk Control Board v. Rehberg*, — M —, 376 P 2d 508, 517.

References

Cited in *State v. Peterson*, 138 M 257, 356 P 2d 925, 926.

27-423. Constructions, exceptions and limitations.

Collection of License Fees

Milk control board may collect license fees based on whole volume of milk sold by producer whether within a certain

marketing area or anywhere else within the state of Montana. *Heimbichner v. Montana Milk Control Board*, 134 M 366, 332 P 2d 922, 925.

27-424. Additional remedies.

Action for Unpaid Fees

A complaint by the milk control board against a former operator of a dairy for unpaid license and assessment fees imposed upon him by the board between 1958 and 1960 stated a cause of action, the board having complied with the provisions of this section. *Montana Milk Control Board v. Maier*, — M —, 367 P 2d 305, 307.

Enforcement of Regulations

The Montana milk control board may restrain a dairy from selling milk for consumption at a price less than the minimum set under section 27-407 by the board. *Montana Milk Control Board v. Rehberg*, — M —, 376 P 2d 508, 517.

Facts to be Noticed

If the milk control board proposes to base any part of an official order fixing

minimum prices upon facts within its own knowledge it must give notice of the specific facts which it will consider. *State ex rel. Montana Milk Control Board v. District Court*, 138 M 179, 355 P 2d 664, 669.

Unanimous Consent of Board

Petition disclosed that "unanimous consent of all members of the board" had been had prior to the institution of the proceeding as required by this section, where the petition states that executive secretary of the board "as such administrative officer, has the authority of said board to institute this action on their own behalf under the provisions of R. C. M. 1947, § 27-424." *State ex rel. Montana Milk Control Board v. District Court*, 138 M 179, 355 P 2d 664, 666.

27-426. Bonds required of distributors—amounts—forms and conditions. Every distributor before purchasing any milk from a producer shall execute and deliver to the milk control board a surety bond in the minimum sum of one thousand dollars (\$1000.00), executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. Said bond shall be upon a form approved by the board, and shall be conditioned upon the payment in the manner required by this act, of all amounts due to producers for milk purchased by such licensee or applicant during the license year. Said bond shall be to the state in favor of every producer of milk. In case of failure by a distributor to pay any producer or producers for milk in the manner required by this act, the board shall proceed forthwith to ascertain the names and addresses of all producer-creditors of such distributor, together with the amounts due and owing to them and each of them by such distributor, and shall request all such producer-creditors to file a verified statement of their respective claims with the board. Thereupon the board shall bring an action on the bond on behalf of said producer-creditors. Upon any action being commenced upon said bond, the board may require the filing of a new bond; and immediately upon a recovery in any action upon such bond, such distributor shall file a new bond; and upon failure to file same within ten (10) days in either case, such failure shall constitute grounds for the revocation or suspension of the license of such distributor. In the event that recovery upon the bond is not

sufficient to pay all of the claims as finally determined and adjudged by the court, any such amount recovered shall be divided pro rata among said producer-creditors.

The minimum bond of one thousand dollars (\$1000.00) shall be required of distributors purchasing an average daily quantity of milk of less than one hundred gallons; distributors purchasing an average daily quantity of one hundred gallons and less than two hundred gallons during any calendar month during a license year shall post a bond in the amount of two thousand dollars (\$2000.00); distributors purchasing an average daily quantity of two hundred gallons and less than three hundred gallons during any calendar month during a license year shall post a bond in the amount of three thousand dollars (\$3000.00); distributors purchasing an average daily quantity of three hundred gallons or more during any calendar month during a license year shall post a bond in the sum of five thousand dollars (\$5000.00).

In the event that any distributor so increases his purchases of milk during the license year that said purchases exceed the amount for which said distributor is bonded, said distributor shall forthwith post such additional bond or bonds as may be required to comply with the provisions of this section.

Failure of any distributor who purchases milk from producers to execute and deliver the bond as herein provided and required shall constitute a violation of this act; failure of any such distributor to post such additional bond or bonds as may be required to comply with the provisions of this act shall likewise constitute a violation of this act.

History: En. Sec. 10, Ch. 192, L. 1959.

27-427. Local advisory boards. Whenever a public hearing is scheduled by the milk control board in any marketing area for the purpose of fixing prices, the board shall, at least ten (10) days prior to the date set for such hearing, appoint a local advisory board, the function of which shall be to assist and advise the milk control board in matters pertaining to the production and marketing of milk in said marketing area. The local advisory board shall consist of two producers and two distributors, who are respectively actively engaged in milk production and distribution in the area. Such local advisory board shall meet with the milk control board at the call of the milk control board before, during, or after such public hearing to fix prices; and a verbatim transcript of all matters and things discussed by the milk control board with such local advisory board at all such conferences or meetings shall be prepared and shall be considered a part of the record of the hearing. The members of such local advisory board shall serve without pay, but in case conferences or meetings with the milk control board are held outside of the marketing area in which they produce or distribute milk they shall be entitled to receive actual and necessary expenses incurred in attending such meetings or conferences. In no event shall there be more than three meetings or conferences between the milk control board and such local advisory board; and in all events such local advisory board shall cease to exist when the milk control board

promulgates its decision or order fixing prices following the public hearing heretofore mentioned.

History: En. Sec. 11, Ch. 192, L. 1959.

27-428. Judicial review of orders. Any person or persons, jointly or severally, aggrieved by any decision or order of the milk control board may present to a court of record a petition, duly verified, setting forth that such decision or order is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within twenty (20) days after the filing and posting of the decision or order in the office of the board as required by section 27-413 of the Revised Codes of Montana of 1947.

Upon presentation of such petition, the court may allow a writ of certiorari directed to the board to review such decision or order of the board and shall prescribe therein the time within which a return thereto must be made to the court and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The writ shall command the board to certify fully to the court, at a specified time and place, a transcript of the record and proceedings, describing or referring to them with convenient certainty; that the same may be reviewed by the court, and may command the board to desist from further proceedings in the matter to be reviewed.

The board shall not be required to return the original papers acted upon by it, but it shall be sufficient for the board to return certified or sworn copies thereof, or of such portions thereof, as may be called for by such writ.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

When any such writ is granted, the cause shall have precedence upon the calendar of the court, and judgment and decree shall be entered therein as expeditiously as possible. The court shall affirm, modify, or reverse the decision or order of the board in accordance with law.

History: En. Sec. 12, Ch. 192, L. 1959.

27-429. Service of process upon board. When any petition or complaint is filed in any court naming the milk control board as a party, process may be served upon said board by delivering to, and leaving with, the executive secretary of said board, at his office, at the state capitol, a true copy of the summons, writ, or order, as the case may be, and a true copy of the complaint, petition, or application upon which such summons, writ, or order was based. In case of the absence of the executive secretary from his office, the assistants, clerks, auditors, accountants, or other personnel in his said office shall accept and receipt for such service.

History: En. Sec. 13, Ch. 192, L. 1959.

Separability Clause

Section 15 of Ch. 192, Laws 1959 read
"If any section, subdivision, sentence or

word of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, such determination shall not affect the remaining portions of this act."

Repealing Clauses

Section 14 of Ch. 192, Laws 1959 read "Section 27-412 and section 27-419 of the Revised Codes of Montana of 1947, shall be, and the same are, hereby repealed."

Section 16 of Ch. 192, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

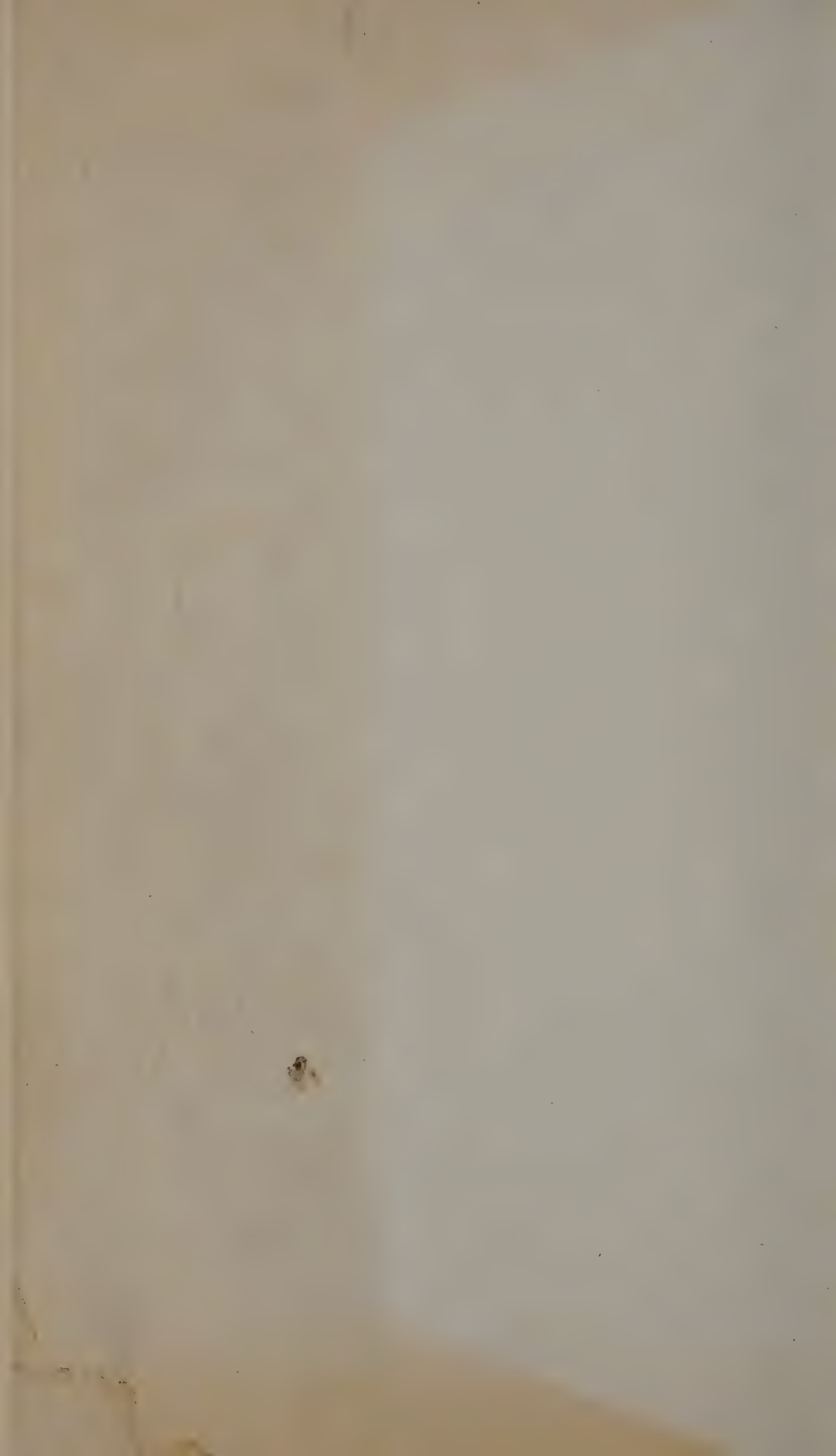
Section 17 of Ch. 192, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 9, 1959.

CHAPTER 5—OLEOMARGARINE

27-517. Revocation of licenses.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see Table A, M. R. Civ. P. (sec. 93-2711-7).



REVISED CODES OF MONTANA

VOLUME 3

Part 1

1963 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 3 (PART 1) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 3
(PART 1) THROUGH VOLUME 377, PACIFIC
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NEW LAWS IN VOLUME 3 (Part 1)

For index see pocket supplement to Replacement Volume 9

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MONTANA REVISED CODES

TITLE 28—FORESTS AND FORESTRY

- Chapter 1. State board of forestry—forest conservation and fire protection, 28-105, 28-111, 28-123, 28-124.
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CHAPTER 1—STATE BOARD OF FORESTRY—FOREST CONSERVATION AND FIRE PROTECTION

- Section 28-105. Powers of board.
28-111. Determination of costs of fire protection—certification—tax levy.
28-123. Disposal of moneys.
28-124. Disbursement of moneys.

28-105. Powers of board. To effectuate, accomplish and maintain the purposes of this act, the board is hereby authorized and empowered:

(a) To classify the forest land areas of the state for which conservation and fire protection measures are reasonably required, and to change or modify such classification from time to time as in its judgment shall be proper.

(b) To create organized forest fire protection districts; provided, however that before such district be created the board shall hold a hearing in any county in which such proposed district or a part thereof shall be included and shall give notice of such hearing at least twenty (20) days in advance thereof to all owners to be affected by such proposed district; service of such notice may be made by registered or certified mail or by publication in a newspaper published in the county in which such hearing is to be held, and if no newspaper is published in such county then in a newspaper having a general circulation therein; provided, further, that no forest fire protection district may be created unless approved in writing by vote of not less than seventy-five per cent (75%) of the owners representing at least fifty-one per cent (51%) of the acreage to be involved in such proposed forest fire protection district.

(c) To provide through the state forester for forest fire protection of any forest lands by the state forester's organization, or by contract or any other feasible means, in co-operation with any federal, state or other recognized agency or agencies.

(d) To make and enforce reasonable rules and regulations for the purpose of enforcing and accomplishing the provisions and purposes of this act; provided, however, such rules and regulations shall not conflict with the powers of the state board of land commissioners.

(e) To co-operate with the government of the United States and any of its bureaus, services and agencies in accordance with federal statutes and regulations thereunder.

History: En. Sec. 5, Ch. 128, L. 1939; amd. Sec. 1, Ch. 90, L. 1959; amd. Sec. 1, Ch. 83, L. 1963.

Effective Date

Section 2 of Ch. 83, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 27, 1963.

Amendment

The 1963 amendment added the provisos to paragraph (b).

28-111. Determination of costs of fire protection—certification—tax levy. The state forester will prepare a fire protection plan, for the approval of the board in which fire protection costs for each classification within each protection zone is determined. The board will establish the portion of the planned fire protection costs to be borne by the state, and the portion to be borne by the owners of classified forest land. The state forester will request the legislature to appropriate the state's portion as approved by the board. After the appropriation is made by the legislature, the board will cause an assessment to be made on the owners of classified forest land, as specified in section 28-109, sufficient to bring the total amount received to the amount specified in the approved plan.

On or before the second Tuesday in August of each year, the secretary shall determine the names of all owners who shall have failed to provide the forest fire protection for their lands required by this act, together with the description of such lands and the acreage thereof, and calculate the total amount due to the board from each such owner for such forest fire protection which shall not exceed the maximum hereinbefore specified.

The secretary shall submit a statement of the foregoing to the board and upon approval thereof by the board, the secretary shall certify in writing to the county assessor of each county, the names of such owners of forest lands in his county, together with a description of such lands and a statement of the amount so found to be due and owing by each of such owners to the board for forest fire protection.

Upon receiving such certificate from the secretary showing the amount due, the county assessor shall extend the amounts so certified upon the county tax rolls covering such lands, and such sums shall become obligations of the owner to be paid and collected in the same manner and at the same time and with like penalties as general state and county taxes upon the same property are collected. All sums so collected shall be promptly transmitted to the state treasurer, who is hereby required to deposit the same in the agency fund to the credit of the state forester.

History: En. Sec. 11, Ch. 128, L. 1939; amd. Sec. 1, Ch. 95, L. 1959; amd. Sec. 215, Ch. 147, L. 1963.

tence in the fourth paragraph, substituted "the agency fund to the credit of the state forester" for "a special fund designated the foresters' co-operative work fund, as provided for in section 81-1410."

Amendment

The 1963 amendment, in the last sen-

28-123. Disposal of moneys. The following funds may be expended as directed by the board for fire prevention, detection and suppression: All moneys collected by county treasurers as assessments on forest lands for forest protection; moneys collected for the abatement of public nuisances; all fines collected for the violations of this act; the state's share of the co-operative fire protection funds allocated by the federal government and any other funds provided for the purposes herein indicated. All other

co-operative funds collected, appropriated or allocated for the use of the state forester, including funds for the removal of slash hazards resulting from logging or other wood operations on state and private forest lands, those provided for the purpose of helping to maintain the maximum productivity of the forests of the state, those provided for purposes designed to assist the farmers of the state in the establishment of wind-breaks and woodlots in localities where such forest plantings are helpful, and funds for other co-operative work, shall not be expended except for the specific purposes for which the same were collected, appropriated or allocated.

History: En. Sec. 23, Ch. 128, L. 1939; amd. Sec. 217, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted a sentence at the beginning of the section which read: "In compliance with section 81-1410,

all moneys received from all public agencies, private agencies and individuals co-operating with the state forester or the board of forestry, shall be deposited with the state treasurer and placed to the credit of the foresters' co-operative work fund."

28-124. Disbursement of moneys. All co-operative moneys collected under the authority of section 28-111 and appropriated or allocated for the use of the state forester and deposited with the state treasurer shall be transferred to the earmarked revenue fund. Such moneys may then be paid out after approval and request of the said board and all vouchers or claims shall be signed on behalf of the said board by the secretary thereof.

History: En. Sec. 24, Ch. 128, L. 1939; amd. Sec. 218, Ch. 147, L. 1963.

Amendment

The 1963 amendment divided the former first sentence into two sentences; inserted "under the authority of section 28-111 and" after "collected"; deleted "in the foresters' co-operative work fund" after "state treasurer"; inserted "transferred to the earmarked revenue fund" at the end of the first sentence and "Such moneys

may then be" at the beginning of the second sentence; and deleted a former second sentence which read, "The state board of examiners is hereby authorized to approve for payment (out of any moneys available for purposes designated) all claims properly executed and submitted in the manner provided by law to the person, firm, corporation or public or private agency entitled thereto in compliance with the provisions of this act."

CHAPTER 3—ESTABLISHMENT OF STATE FOREST AND CONSERVATION EXPERIMENT STATION

Section 28-304. Reports—disposition of income.

28-304. Reports—disposition of income. The state board of education may require such regular and special reports to be prepared as it deems necessary. Such regular reports and the special reports and bulletins, with proper illustrations and maps, shall be printed and distributed as the state board of education may direct, and as the interests of the state and of science and industry may demand.

Income received by the station shall be deposited in the state treasury and used for the purposes of administering this act.

History: En. Sec. 4, Ch. 141, L. 1937; amd. Sec. 234, Ch. 147, L. 1963.

Amendment

The 1963 amendment added the second paragraph.

TITLE 29—FRAUDULENT CONVEYANCES

CHAPTER 1—UNIFORM FRAUDULENT CONVEYANCE ACT

29-105. Conveyances by persons in business.

Joinder of Actions

A creditor may join with his cause of action alleging indebtedness a second cause of action alleging that debtor's giving of mortgages and conveyance of certain property was without fair considera-

tion and made him insolvent, and a third cause of action alleging that after executing the mortgages, he had unreasonably small capital in his business. Cahill-Mooney Constr. Co. v. Ayres, — M —, 373 P 2d 703, 709.

29-109. Rights of creditors whose claims have matured.

Money Judgment

The right to seek a money judgment is merely collateral to the primary right to

set aside the conveyance. Cahill-Mooney Constr. Co. v. Ayres, — M —, 373 P 2d 703, 705.

TITLE 30—GUARANTY, INDEMNITY AND SURETYSHIP

Chapter 6. Letters of credit, Repealed—Section 10-102, Chapter 264, Laws of 1963.

CHAPTER 6—LETTERS OF CREDIT

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

30-601 to 30-609. (8210 to 8218) Repealed.

Repeal

These sections (Secs. 3710 to 3718, Civ. C. 1895; Secs. 5695 to 5703, Rev. C. 1907; Secs. 8210 to 8218, R. C. M. 1921), relating to letters of credit, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

TITLE 31—HIGHWAY PATROL

- Chapter 1. Montana highway patrol—creation—powers and duties, 31-135, 31-163 to 31-169.
2. Highway patrolmen's retirement system, 31-201, 31-205, 31-206, 31-209, 31-210.

CHAPTER 1—MONTANA HIGHWAY PATROL—CREATION— POWERS AND DUTIES

- Section 31-135. Licenses issued to operators and chauffeurs.
31-163. Driver license compact enacted—text.
31-164. Highway patrol board as licensing authority—information and documents furnished.
31-165. Reimbursement of compact administrator.
31-166. Governor as executive head.
31-167. Report to highway patrol board of suspension or revocation of licenses.
31-168. Offenses furnishing ground for suspension or revocation of license.
31-169. Review of administrative actions.

31-131. Application of minors.

References

Castle v. Thisted, — M —, 363 P 2d 724, 725.

31-135. Licenses issued to operators and chauffeurs. (a) The highway patrol board shall have authority to appoint county treasurers and other qualified officers to act as its agent or agents for the sale of driver's licenses, and shall make necessary rules and regulations governing such sales. The board shall, upon payment of four dollars (\$4), issue to every applicant qualifying therefor, an operator's or chauffeur's license as applied for, which license shall be purchased biennially on or before the operator's or chauffeur's birthday, and shall expire on the anniversary of the date of birth of the operator or chauffeur, two (2) years or less after the date of issue, and shall contain a photograph of such licensee in such size and form as may be prescribed by the highway patrol board, a distinguishing number issued to the licensee, the full name, date of birth, resident address, and a brief description of the licensee and either a facsimile of the signature of the licensee or a space upon which he shall write his signature in pen and ink, immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee.

(b) The board shall, when any person applies for renewal of an operator's or chauffeur's license, test the applicant's eyesight, and may also, in the board's discretion, have such applicant demonstrate his physical ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle. This examination shall not be required of any applicant who has successfully completed such an examination within the preceding five year period.

(c) Whenever the board issues an original license to a person under the age of twenty-one (21) years, such license shall be designated and

clearly marked as a "provisional license." Any license so designated and marked may be suspended by the board for a period of not more than twelve (12) months, when its record discloses that the licensee, subsequent to the issuance of such license, has been guilty of careless or negligent driving. Upon renewal as applicable to operator's licenses, the board may for any reasonable cause, as shown by its records, designate the renewal of the license as provisional, otherwise, a license in usual form shall be issued subject to other provisions of the laws of Montana.

(d) It shall be unlawful for any person to have in his possession or under his control, more than one (1) Montana operator's or chauffeur's license at any one time.

History: En. Sec. 19, Ch. 267, L. 1947; amd. Sec. 1, Ch. 135, L. 1951; amd. Sec. 1, Ch. 130, L. 1953; amd. Sec. 1, Ch. 249, L. 1961; amd. Sec. 1, Ch. 228, L. 1963.

passage and approval. Approved March 9, 1963.

Validity of Amendment

The 1961 amendment of this section [House Bill No. 342] was not rendered invalid because the deciding vote therein was cast by the lieutenant governor on the third reading, where at that time the senators then present and voting, were equally divided. State ex rel. Easbey v. Highway Patrol Board, — M —, 372 P 2d 930, 939.

Amendment

The 1963 amendment completely rewrote subsection (b), for previous text of which see parent volume; and made a minor change in punctuation.

Effective Date

Section 2 of Ch. 228, Laws 1963 provided the act should be in effect upon its

31-163. Driver license compact enacted—text. This act shall be known and may be cited as the "Driver License Compact."

ARTICLE I—FINDINGS AND DECLARATION OF POLICY

(a) The party states find that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles.

(2) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(3) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(b) It is the policy of each of the party states to:

(1) Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

(2) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the over-all compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

ARTICLE II—DEFINITIONS

As used in this compact:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) "Home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(c) "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

ARTICLE III—REPORTS OF CONVICTION

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and shall include any special findings made in connection therewith.

ARTICLE IV—EFFECT OF CONVICTION

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used;

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (a) hereof as being applica-

ble to and identifying those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

ARTICLE V—APPLICATIONS FOR NEW LICENSES

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

ARTICLE VI—APPLICABILITY OF OTHER LAWS

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other co-operative arrangement between a party state and a nonparty state.

ARTICLE VII—COMPACT ADMINISTRATOR AND INTERCHANGE OF INFORMATION

(a) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VIII—ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six (6) months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE IX—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 154, L. 1963.

Title of Act

An act to establish a stable and uniform basis for interstate co-operation in driver licensing and the reporting of convictions and to be known as the Driver License Compact; setting forth the basic purposes of the compact; defining certain terms used in act; requiring party state to report convictions to licensing authority of home state of licensee; providing party state may give same effect of conviction regardless of jurisdiction of occurrence; providing that license authority in party state shall not issue license to party whose license has been suspended, revoked or to

party who fails to surrender license of another party state; providing that adoption of compact will not nullify existing statutes; providing for administrator of act; providing for entry and withdrawal from compact; providing for construction and severability of act; providing that if any part of act held unconstitutional it shall not affect remaining parts of act; defining "licensing authority" and "executive head"; providing authority to furnish information to member states; providing that administrator shall not be entitled to additional compensation; requiring agencies or court to report to state agency; repealing all acts or parts of acts in conflict herewith.

31-164. Highway patrol board as licensing authority—information and documents furnished. As used in the compact, the term "licensing authority" with reference to this state, shall mean the Montana highway patrol board. Said board shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles III, IV and V of the compact.

History: En. Sec. 2, Ch. 154, L. 1963.

31-165. Reimbursement of compact administrator. The compact administrator provided for in Article VII of the compact shall not be entitled to any additional compensation on account of his service as such administrator, but shall be entitled to expenses incurred in connection with his duties and responsibilities as such administrator, in the same manner as for expenses incurred in connection with any other duties or responsibilities of his office or employment.

History: En. Sec. 3, Ch. 154, L. 1963.

31-166. Governor as executive head. As used in the compact, with reference to this state, the term "executive head" shall mean the governor.

History: En. Sec. 4, Ch. 154, L. 1963.

31-167. Report to highway patrol board of suspension or revocation of licenses. Any court or other agency of this state, or a subdivision thereof, which has jurisdiction to take any action suspending, revoking or otherwise limiting a license to drive, shall report any such action and the adjudication upon which it is based to the Montana highway patrol board within five (5) days on forms furnished by the Montana highway patrol board.

History: En. Sec. 5, Ch. 154, L. 1963.

31-168. Offenses furnishing ground for suspension or revocation of license. Items enumerated in Article IV (a), subsections (1), (2), (3) and (4) [31-163] of this act refer specifically to sections 94-2507, 32-2142, 94-114 and 32-1202, Revised Codes of Montana, 1947, respectively.

In addition to convictions mentioned above the Montana highway patrol board for the purpose of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if such conduct had occurred in this state for convictions of: 1. perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (31-154, Revised Codes of Montana, 1947) and; 2. three (3) convictions of reckless driving committed within a period of twelve (12) months (32-2143, Revised Codes of Montana, 1947).

History: En. Sec. 6, Ch. 154, L. 1963.

31-169. Review of administrative actions. Any act or omission of any official or employee of this state done or omitted pursuant to, or in enforcing, the provisions of the "Driver License Compact" shall be subject to review pursuant to the provisions of section 31-152, Revised Codes of Montana, 1947, but any review of the validity of any conviction reported pursuant to the compact shall be limited to establishing the identity of the person so convicted.

History: En. Sec. 8, Ch. 154, L. 1963.

pealed all acts or parts of acts in conflict therewith.

Repealing Clause

Section 7 of Ch. 154, Laws 1963 re-

CHAPTER 2—HIGHWAY PATROLMEN'S RETIREMENT SYSTEM

Section 31-201. Definitions.

31-205. Payments into the Montana highway patrolmen's retirement account—investment.

31-206. Rules and regulations—actuarial data.

31-209. Payments by contributors.

31-210. Contributions by the state of Montana.

31-201. Definitions. The following words and phrases as used in this act, unless a different meaning is plainly implied by the context, shall have the following meanings:

"Accumulated deductions," the total of the amounts deducted from the salary of a contributor and paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

"Beneficiary," shall be such person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

"Retired patrolman," any person in receipt of a retirement allowance under this act.

"Board," the Montana highway patrolmen's retirement board.

"Compulsory retirement age," sixty years of age.

"Contributor," any person who has accumulated deductions in the fund, standing to his credit.

"Final salary," the average annual compensation received by a contributor before any deductions have been made, and exclusive of maintenance, allowances and expenses, for any three (3) years of continuous service upon which contributions have been made, or, in the event a member has not served three (3) years, the total retirement compensation earned, divided by the number of years served.

"Actuarial equivalent," the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on such person's attained age and sex at the time the option becomes available.

"Account," the Montana highway patrolmen's retirement account in the agency fund.

"Involuntary retirement," a retirement not for cause and before retirement age.

"Member's annuity," payments for life derived from contributions made by the contributor.

"Optional retirement age," the age at which a contributor may retire after twenty (20) years' service or more.

"Retirement age," the age at which a member retires after twenty-five (25) years of creditable service with the Montana highway patrol.

"Retirement allowance," the state annuity plus the member's annuity.

"State annuity," payments for life derived from contributions made by the state of Montana.

History: En. Sec. 1, Ch. 37, L. 1945;
amd. Sec. 1, Ch. 243, L. 1955; amd. Sec.
201, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the definition of "Account" for a paragraph reading, "'Fund,' the Montana highway patrolmen's retirement fund."

31-205. Payments into the Montana highway patrolmen's retirement account—investment. All appropriations made by the state of Montana, all contributions by members of the Montana highway patrol, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the state treasurer, who shall credit said payments to the Montana highway patrolmen's retirement account in the agency fund. Whenever there is on deposit in the Montana highway patrolmen's retirement account a sum in excess of

twenty-five thousand dollars (\$25,000.00), such excess will be invested by the state board of land commissioners as part of the long term investment fund and any of the account less than twenty-five thousand dollars (\$25,000.00) in amount shall be invested by the state board of land commissioners as part of the short term investment fund when so directed by the Montana highway patrolmen's retirement board.

History: En. Sec. 5, Ch. 37, L. 1945; amd. Sec. 1, Ch. 158, L. 1949; amd. Sec. 1, Ch. 176, L. 1953; amd. Sec. 202, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the references to the "Montana highway patrolmen's retirement account in the agency fund" for references to the "Montana highway patrolmen's retirement fund."

31-206. Rules and regulations—actuarial data. The board may establish such rules and regulations as it deems necessary, and is charged within the limitations of this act for its proper administration, operation, and enforcement, and shall be the authority under this act as to the conditions under which persons may be admitted to and continue to receive benefits under the retirement system. It shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors to and the beneficiaries of the account, and shall adopt for the retirement system one or more mortality tables.

History: En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "account" for "fund" in the last sentence.

31-209. Payments by contributors. Every member shall be required to contribute into the account a sum equal to five per cent (5%) of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account, provided that when a member has served twenty-five (25) years in the Montana highway patrol all payments by him and contributions to his credit from the account shall cease.

History: En. Sec. 9, Ch. 37, L. 1945; amd. Sec. 5, Ch. 243, L. 1955; amd. Sec. 204, Ch. 147, L. 1963.

posited to his credit in the account" for "credited to his account in the fund"; and substituted "account" for "fund" in two other places.

Amendment

The 1963 amendment substituted "de-

31-210. Contributions by the state of Montana. The state of Montana shall annually contribute to the account fifteen per cent (15%) of all moneys received by the state of Montana from the collection of the motor vehicle driver's license fee provided for under the laws of the state of Montana.

History: En. Sec. 10, Ch. 37, L. 1945; amd. Sec. 6, Ch. 243, L. 1955; amd. Sec. 205, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "account" for "fund."

TITLE 32—HIGHWAYS, BRIDGES AND FERRIES

- Chapter 3. Supervision of public highways, 32-317 to 32-321.
7. Public bridges, 32-711.
 16. State highway commission and highway engineer—powers and duties, 32-1615, 32-1615.2, 32-1615.3, 32-1619, 32-1626.
 19. Montana toll bridge authority, 32-1905.
 20. Controlled access highways, 32-2001 to 32-2003, 32-2006 to 32-2009, 32-2009.1, 32-2010.
 21. Uniform act regulating traffic on highways, 32-2137, 32-2174, 32-21-163, 32-21-164.

CHAPTER 3—SUPERVISION OF PUBLIC HIGHWAYS

- Section 32-317. Designation of emergency area near construction project.
- 32-318. Notice of designation of emergency area—removal of designation.
- 32-319. Livestock not to run at large in emergency area.
- 32-320. Impounding of animals at large—notice to owner—fees and mileage
- 32-321. Penalty for violations.

32-317. Designation of emergency area near construction project. A board of county commissioners may designate a portion of a county or state secondary road as an emergency area if increased traffic due to a construction project threatens public safety.

History: En. Sec. 1, Ch. 118, L. 1963.

Title of Act

An act authorizing a board of county commissioners to designate a portion of a county or state secondary road as emer-

gency area if increased traffic due to a construction project threatens public safety; and prohibiting the running of livestock across the emergency area unless in transit under herd in the custody of an attendant; providing an effective date.

32-318. Notice of designation of emergency area—removal of designation. Notice of such designation shall be printed in a newspaper of general circulation in the county. The notice shall describe the portion of road to be designated as an emergency area and the reason for such designation. The board shall post the area or roads affected with adequate signs. The board shall remove the emergency designation within thirty days after the cessation of the increased traffic.

History: En. Sec. 2, Ch. 118, L. 1963.

32-319. Livestock not to run at large in emergency area. A person who owns or has custody of livestock shall not permit the livestock to run upon the emergency area unless the livestock are under herd in transit across the emergency area in the custody of an attendant.

History: En. Sec. 3, Ch. 118, L. 1963.

32-320. Impounding of animals at large—notice to owner—fees and mileage. A sheriff or other peace officer may impound livestock running on an emergency area without an attendant and shall notify the rightful owner of such impounded livestock. If the sheriff or peace officer cannot determine the rightful owner, then a state stock inspector or deputy state stock inspector of the county may be called to examine the livestock for

brands to determine ownership. The rightful owners shall be notified by the inspector and the usual inspection fees and mileage shall be paid by the owner of such livestock.

History: En. Sec. 4, Ch. 118, L. 1963.

32-321. Penalty for violations. A person violating this act is guilty of a misdemeanor and upon conviction shall be fined not less than ten dollars (\$10.00) or more than fifty dollars (\$50.00) for each violation.

History: En. Sec. 5, Ch. 118, L. 1963. after its passage and approval. Approved March 1, 1963.

Effective Date

Section 6 of Ch. 118, Laws 1963 provided the act should be in effect from and

CHAPTER 7—PUBLIC BRIDGES

Section 32-711. Bridges to be under control and management of county commissioners—police regulations.

32-711. (1713) Bridges to be under control and management of county commissioners—police regulations. All bridges referred to in the foregoing sections shall be under the management and control of the board of county commissioners of the county in which such bridge is situated, and all repairs to and planking and replanking, paving, and repaving thereof shall be done as and when directed by the board of county commissioners; the board of county commissioners may also make repairs to stream beds and watercourses and the banks thereof when such a bridge is in danger of being damaged or lost because of erosion to or changes in the beds or banks of such streams; provided, that such bridges and all persons thereon shall be subject to the reasonable police regulations of the city or town in which any such bridge is situated.

History: En. Sec. 6, Ch. 63, L. 1917; re-en. Sec. 1713, R. C. M. 1921; amd. Sec. 1, Ch. 172, L. 1963.

Amendment

The 1963 amendment inserted the clause authorizing repairs to stream beds and watercourses and the banks thereof.

CHAPTER 11—SPEED AND TRAFFIC REGULATIONS

32-1113. (1748.1) Owner or operator of vehicle released, etc.

Jury Question

The question of gross negligence was properly submitted to the jury on evidence that defendant approached a known 90-degree turn at a speed of 35 to 40 miles per hour on a rough road despite warnings from the plaintiff guest and another passenger to slow down. *Carter v. Miller*, — M —, 372 P 2d 421, 425.

Pleading of Negligence

A general allegation of negligence in the complaint is sufficient to raise the issue of gross negligence. *Carter v. Miller*, — M —, 372 P 2d 421, 424.

CHAPTER 16—STATE HIGHWAY COMMISSION AND HIGHWAY ENGINEER—POWERS AND DUTIES

Section 32-1615. Rights of way, and other properties, how procured.

32-1615.2. Description and plan of new or controlled access highway or facility—recording.

32-1615.3. Buildings and improvements not compensable—with exceptions.

32-1619. Disposition of state highway moneys.

32-1626. Lewis and Clark highway—routes comprising.

32-1615. (1797) Rights of way, and other properties, how procured.

The state highway commission shall have the power and authority to lay out, alter, construct, improve and maintain highways in the state of Montana.

Notwithstanding any other provision of law, the state highway commission shall have the power and authority to acquire, by purchase or any other lawful manner, either in fee or in any lesser estate or interest, any lands or other real property, excluding oil, gas and mineral rights, which it deems reasonably necessary for present or future state highway purposes. The acquisition of such lands or real property, or interest therein, for such purposes includes, but is not limited to, that which is deemed reasonably necessary by the state highway commission, for any of the following purposes:

(a) For rights of way, including those necessary for state highways within cities.

(b) For the purposes of exchanging the same for other real property to be used for rights of way or other purposes authorized herein, provided that the same shall not be acquired for such a purpose by condemnation procedures.

(c) For deposits of road building materials for reasonably foreseeable future road building purposes and uses, including rock, gravel, sand or earth; provided however that the right of eminent domain shall not be available for the acquisition of any such deposits of road building materials which may then constitute a component part of an existing private business enterprise.

(d) For offices, weighing stations, shops or storage yards, buildings, rest areas, informational sites or communication facilities.

(e) Parks adjoining or near any state highway, provided that the same shall not be acquired for such a purpose by condemnation procedures.

(f) For the culture and support of trees or shrubs which benefit any state highway by aiding in the maintenance and preservation of the roadbed.

(g) For drainage in connection with any state highway.

(h) For the maintenance of any unobstructed view of any portion of a state highway so as to promote the safety of the traveling public.

(i) For the construction and maintenance of stock lanes or trails.

(j) For the construction and maintenance or replacement of private or public irrigation systems, private or public drainage systems, or natural water or drainage courses made necessary by highway construction.

(k) For providing land or other real property easements or rights of way for necessary relocation of existing utilities, utility easements or other easements for facilities or purposes then in place, or in effect, upon a proposed right of way.

Whenever it shall be deemed necessary by the commission to secure lands or other real property, or rights therein, as herein provided, and

the same cannot be acquired by purchase at a price or cost which is deemed reasonable by the commission, the commission may direct the attorney general or any county attorney in any county in the state to procure the lands or other real property by proceedings to be instituted in the manner as provided in sections 93-9901 to 93-9926 against all nonaccepting landholders.

The commission may not so direct the attorney general or any county attorney to procure rights of way, easements, lands or other real property as hereinbefore provided, unless the commission first adopts a resolution declaring that public interest and necessity require the construction or completion by the state, of the highway or improvement, for one of the purposes set forth in this section, and that the rights of way, easements, lands or other real property, or interest therein, described in such resolution and sought to be condemned is necessary for the improvement and that the same is planned and located in a manner which will be most compatible with the greatest public good and the least private injury.

Such resolution of the commission shall create and establish a disputable presumption of the public necessity of such proposed public improvement; that the taking of such rights of way, easements, lands or other real property or interests therein, and the amount thereof, is necessary therefor; and that the proposed public improvement is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.

Whenever a part of a parcel of land or other real property is to be taken for state highway purposes and the remainder is to be left in such shape or condition as to be of little market value or to give rise to claims or litigation concerning severance or other damage, the state highway commission may acquire the whole parcel and sell the remainder or exchange the same for other property needed for state highway purposes.

Whenever a part or parcel of land is taken for state highway purposes in such a shape or size as to come under the provisions set forth in section 11-614, R.C.M. 1947, the highway commission shall prepare and file in the office of the county clerk and recorder of the county in which said land lies, the required plat.

The authority conferred by this chapter to acquire rights of way, easements, lands or other real property and interest therein for state highway purposes includes authority to acquire for reasonably foreseeable future needs. The state highway commission is authorized to lease unused portions of any lands which are held for state highway purposes and interstate rights of way which are not presently needed for highway purposes on such terms and conditions as the state highway commission may fix and to maintain and care for such property in order to secure rent therefrom. All rent so received shall be deposited in the state highway fund.

The acquisition of any right of way or easement by the state highway commission for construction, operation, repair, reconstruction, or maintenance of state highways shall include, among other rights, the right to use, remove, relocate, redistribute or otherwise dispose of any and all

gravel or other road building materials, found or located within the boundaries of such rights of way or easements and such gravel or materials shall be deemed real property for the purposes of this act.

History: En. Sec. 15, Ch. 10, Ex. L. 1921; re-en. Sec. 1797, R. C. M. 1921; amd. Sec. 1, Ch. 180, L. 1961; amd. Sec. 1, Ch. 91, L. 1963.

Amendment

The 1963 amendment inserted the third paragraph from the end (the paragraph referring to section 11-614).

Rental of Unused Right of Way

The 1961 amendment of this section so as to give express authority for the rental of unused right of way rendered moot a taxpayers' action to restrain the highway commission from granting an encroachment permit, where there was no indica-

tion that the permit, when granted, would violate the terms of the statutory amendment. *Wilson v. State Highway Commission*, — M —, 370 P 2d 486, 488.

Transfer of Land

Any manner of transferring unused highway right of way which is inconsistent with this section is by implication excluded. *Wilson v. State Highway Commission*, — M —, 370 P 2d 486, 488.

The state highway commission cannot give away or loan gratuitously the use of an unused highway right of way. *Wilson v. State Highway Commission*, — M —, 370 P 2d 486, 488.

32-1615.2. Description and plan of new or controlled access highway or facility—recording. Whenever the state highway commission shall definitely establish the location, width and lines of any new or proposed highway, or declare any road, street or highway, as a controlled access facility, it shall cause the description and plan of any such highway or facility to be made, showing the center line of said highway and the established width thereof and attach thereto a certified copy of the resolution of the state highway commission establishing such location, and thereupon such description, plan and resolution shall be recorded in the office of the county clerk and recorder of the proper county in a separate book kept for such purposes, which shall be furnished to the county clerk and recorder of such county by the state highway commission at the expense of the state.

History: En. Sec. 1, Ch. 143, L. 1963.

Title of Act

An act to authorize the recording of locations of new highways or controlled access facilities by the state highway commission; providing that improvements, buildings or subdivisions placed upon said

lands within the limits of such location may not be taken into consideration for the purpose of assessing compensation for such lands; repealing all acts or parts of acts in conflict herewith; and providing that this act shall be effective from the date of its passage and approval.

32-1615.3. Buildings and improvements not compensable—with exceptions. No consideration, allowance or assessment of values or compensation shall be had in the purchase or condemnation of any buildings or improvements or subdivisions thereafter made upon the above described lands placed or erected within the limits of any such highway or facility, the location, width and lines of which have been established and recorded; provided, that the establishment of any highway location as set forth in section (1) [32-1615.2] hereof shall be ineffective after one year from the filing thereof if no action to condemn or acquire the property within said limits has been commenced within said time. This act shall not apply to crops or similar improvements planted on such lands. Such improvements shall be governed by section 93-9913, Revised Codes of Montana for 1947.

History: En. Sec. 2, Ch. 143, L. 1963.

Effective Date

Repealing Clause

Section 3 of Ch. 143, Laws 1963 repealed all acts or parts of acts in conflict therewith.

Section 4 of Ch. 143, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 2, 1963.

32-1619. (1799) Disposition of state highway moneys. All moneys received for the use and purpose of the state highway commission from the receipt or transfer of motor vehicle license fees, as provided by law, or from other state sources shall be deposited in the earmarked revenue fund to the credit of the state highway commission. Any reference to the state highway fund in this code shall be taken to mean the state highway account in the earmarked revenue fund. All moneys received from the counties, and from the federal government or other agencies shall be deposited in the federal and private revenue fund to the credit of the state highway commission. Hereafter all moneys collected for the state highway commission as authorized by law shall be credited to such fund or funds by the state treasurer.

History: En. Sec. 17, Ch. 10, Ex. L. 1921; re-en. Sec. 1799, R. C. M. 1921; amd. Sec. 212, Ch. 147, L. 1963.

Amendment

The 1963 amendment substantially rewrote this section. For previous text, see parent volume.

32-1626. Lewis and Clark highway—routes comprising. There is hereby established the Lewis and Clark highway, which shall be composed of the following existing routes: Beginning at the Idaho state line west of Lolo Hot Springs, Montana, to the junction of highway ninety-three (93) at Lolo, Montana; thence to Missoula, Montana, on highway ninety-three (93); thence east from Missoula, Montana, on highway twelve (12) and ten (10) to Garrison, Montana; thence from Garrison, Montana, following the route of highway twelve (12) through Forsyth and Baker, Montana, to the North Dakota state line.

History: En. Sec. 1, Ch. 204, L. 1961; amd. Sec. 1, Ch. 219, L. 1963.

Repealing Clause

Section 2 of Ch. 219, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1963 amendment added that part east of the junction of highway 93 at Lolo.

CHAPTER 19—MONTANA TOLL BRIDGE AUTHORITY

Section 32-1905. Bond issues, nature, maturity, interest, contents—registration—sale.

32-1905. Bond issues, nature, maturity, interest, contents—registration—sale. (1). * * * [Same as parent volume.] ✓

(2) All bonds issued under this act shall contain a statement on the face thereof that the state shall not be obligated to pay the same or the interest thereon except from the special fund hereinafter provided for. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes with the same effect as though they had remained in office until such delivery.

All such bonds shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities. [Effective January 1, 1965.]

(3) to (5). * * * [Same as parent volume.] ✓

History: En. Sec. 5, Ch. 31, L. 1953;
amd. Sec. 11-117, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "fully negotiable, as provided by the Uniform Commercial Code—Investment Securities"

at the end of subsection (2) for "negotiable instruments and shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the state."

CHAPTER 20—CONTROLLED ACCESS HIGHWAYS

Section 32-2001. Purpose.

32-2002. Definitions.

32-2003. Designation as controlled access highway—resolution—findings.

32-2006. Acquisition of property for facility.

32-2007. New and existing facilities—grade crossing eliminations.

32-2008. Existing roads and streets as service roads.

32-2009. Marking of facility with signs.

32-2009.1. Commercial enterprise or structure.

32-2010. Violations specified—penalty.

32-2001. Purpose. It is the declared policy of this state to facilitate the flow of traffic and promote public safety by controlling access to highways included by the bureau of public roads in the national system of interstate highways and to throughways and intersections with throughways.

History: En. Sec. 1, Ch. 104, L. 1955;
amd. Sec. 1, Ch. 156, L. 1963.

Amendment

The 1963 amendment added "and to throughways and intersections with throughways" at the end of the section.

32-2002. Definitions. When used in this act:

(a) "Interstate highway" means any highway now included or which shall hereafter be included as a part of the National System of Interstate Highways.

(b) "Controlled access highway" means all portions of any interstate highway, throughway or public road or street within a throughway intersection area which the state highway commission shall determine and designate for through traffic, over, from or to which owners or occupants of abutting land or other persons have no easement of access or only a limited easement of access, light, air or view, by reason of the fact that the property abuts upon such road, street or highway, or for any other reason, and shall further include those portions of spurs to the interstate highway system which the state highway commission shall determine and designate as unsafe or impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage.

(c) "Controlled access facility" means and includes all streets, alleys, public roads, private roads and ways of passage intersecting any controlled access highway and all real property contiguous to the right of way of any controlled access highway.

(d) "Existing highway" means and includes all highways, roads and streets heretofore established, constructed and in use. It shall not include

new highways, roads or streets, or relocated highways, roads or streets, or portions of existing highways, roads or streets which are relocated.

(e) "Arterial highway" means any state highway designated by agreement between the state highway commission and the secretary of commerce as a part of the federal-aid primary system and any highway so designated as a part of the federal-aid secondary system which has been constructed and is being used primarily for through traffic on a continuous route.

(f) "Throughway" means any portion of an arterial highway constructed and used for carrying traffic partially or entirely around a town or city or a portion thereof.

(g) "Throughway intersection area" means an area within a three hundred foot (300') radius from the point of intersection of the center lines of a throughway and any public road, street or highway.

History: En. Sec. 2, Ch. 104, L. 1955; amd. Sec. 1, Ch. 121, L. 1957; amd. Sec. 2, Ch. 156, L. 1963.

throughway intersection area" near the beginning of paragraph (b); inserted "road, street or" after "property abuts upon such" in paragraph (b); made minor changes in phraseology in paragraph (b); and added paragraphs (e), (f), and (g).

Amendment

The 1963 amendment inserted "throughway or public road or street within a

32-2003. Designation as controlled access highway—resolution—findings. No part or portion of any interstate highway, throughway, or of any public road, street or highway within a throughway intersection area shall be designated as a controlled access highway unless the state highway commission shall, by resolution adopted by the majority vote of the members in attendance at any regular or special meeting thereof, find and determine that it is necessary and/or desirable that the owners or occupants of the abutting land or other persons have no easement of access or only a limited easement of access, light, air or view by reason of the fact that their property abuts upon such highway or for any other reason: It is hereby declared that the requirement by the federal government that access be controlled may be a basis of necessity for the passing of such resolution by the highway authorities; nor shall any part or portion of any interstate, or spurs to the interstate highway system or of any throughway or of any public road, street or highway within a throughway intersection area be designated as a controlled access highway unless the state highway commission shall, by resolution adopted by the majority vote of the members in attendance at any regular or special meeting thereof, find and determine that it is necessary and/or desirable that the rights of, or easements to access, light, air or view be acquired by the state so as to prevent such part or portion of highway from becoming unsafe for or impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage: provided further that no portion of a throughway or public road, street or highway within a throughway intersection area shall be designated a controlled access highway except upon petition in writing of the governing body of any incorporated city or town within which corporate limits such area, or any part thereof, may be located, nor if such area lies wholly or partially without any such corporate limits, except upon the petition of the

board of commissioners of the county within the boundaries of which such area may be located; any such petition to be filed with the state highway commission and, once filed, to be irrevocable except upon concurrence of the state highway commission. Such resolution shall contain a statement of the reasons for the adoption thereof, and shall set forth the location, distance and termini of the portion of the highway designated as a controlled access highway.

History: En. Sec. 3, Ch. 104, L. 1955; amd. Sec. 2, Ch. 121, L. 1957; amd. Sec. 3, Ch. 156, L. 1963.

Amendment

The 1963 amendment substituted "any interstate highway, throughway, or of any public road, street or highway within a throughway intersection area" near the beginning of the section for "an interstate

highway"; substituted "may be a basis of necessity" for "is necessity" in the second sentence; inserted "or of any throughway or of any public road, street or highway within a throughway intersection area" after "spurs to the interstate highway system" in the second sentence; and added the proviso at the end of the second sentence.

32-2006. Acquisition of property for facility. For the purpose of this act, the highway authorities of the state, counties, incorporated cities and towns, respectively, or in co-operation one with the other, may acquire private or public property and property rights for controlled access highways or controlled access facilities and service roads including rights of access, air, view, and light, by gift, devise, purchase, or condemnation, in the same manner as such authorities are now or hereafter may be authorized by law to acquire property or property rights in connection with highways and streets within their respective jurisdictions. A right of way is hereby given, dedicated and set apart for controlled access highways or controlled access facilities through, over, upon or across any county road and any street or alley intersecting a controlled access highway and the acquisition of any such county road, street, or alley for use as a controlled access highway or controlled access facility shall be deemed superior and a more necessary public use and purpose than the public use or purpose to which such road, street or alley has theretofore been dedicated.

History: En. Sec. 6, Ch. 104, L. 1955; amd. Sec. 4, Ch. 156, L. 1963.

first sentence and twice in the second sentence.

Amendment

The 1963 amendment inserted "controlled access highway(s) or" before "controlled access facility(ies)" once in the

Cross-Reference

Filing of location of controlled access facility and limit on condemnation award, secs. 32-1615.2, 32-1615.3.

32-2007. New and existing facilities—grade crossing eliminations. The state or any of its subdivisions shall have authority to provide for the elimination of intersections at grade of controlled access highways or of controlled access facilities with existing state and county roads, and city or town streets at the right of way boundary line of such controlled access highway or facility; and after the establishment of any controlled access highway or facility, no private or public highway or street which is not a part of said facility shall intersect the same at grade. No incorporated city or town street, county or state highway, or other public way shall be opened into or connected with any such controlled access highway or controlled access facility without the consent and previous approval of the

highway authority in the state, county, incorporated city or town having jurisdiction over such controlled access highway or controlled access facility. Provided, however, that the state highway commission may, whenever it determines that traffic is not thereby impeded and that public safety is not thereby impaired, authorize the continued intersection at grade of lightly traveled farm entrances and minor public roads as ways of access to controlled access highways in sparsely populated rural areas; and provided further that, as to interstate highways and throughways, the state highway commission shall have the sole jurisdiction to determine the existence and location of any intersection therewith.

History: En. Sec. 7, Ch. 104, L. 1955; amd. Sec. 5, Ch. 156, L. 1963.

Amendment

The 1963 amendment inserted "of controlled access highways or" after "intersections at grade" near the beginning of the section; inserted "highway or" between "controlled access" and "facility" in two places; inserted "private or public"

before "highway or street" near the end of the first sentence; inserted "controlled access highway or" before "controlled access facility" in two places in the second sentence; inserted "state highway" before "commission" near the beginning of the third sentence; and added the final proviso to the section.

32-2008. Existing roads and streets as service roads. In connection with the development of any controlled access highway or controlled access facility the state, county, or incorporated city or town highway authorities are authorized to plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets or to designate as local service roads and streets any existing road or street, and to exercise jurisdiction over service roads in the same manner as is authorized over controlled access highways or controlled access facilities under the terms of this act, whenever such local service roads are necessary for carrying out any of the provisions of this act. Such local service roads or streets shall be of appropriate design, and shall be separated from the controlled access highway or controlled access facility by means of all devices determined to be necessary in carrying out the provisions of this act.

History: En. Sec. 8, Ch. 104, L. 1955; amd. Sec. 6, Ch. 156, L. 1963.

Amendment

The 1963 amendment inserted "controlled access highway(s) or" before "controlled access facility(ies)" twice in the first sentence and once in the second sentence.

32-2009. Marking of facility with signs. After the opening of any new and additional controlled access highway or controlled access facility or after the designation and establishment of any existing street or highway as included, the particular highways and streets or those portions thereof designated and established shall be physically marked and indicated by the erection and maintenance of signs indicating to drivers of vehicles that they are entering a controlled access area and that they are leaving a controlled access area.

History: En. Sec. 9, Ch. 104, L. 1955; amd. Sec. 7, Ch. 156, L. 1963.

Amendment

The 1963 amendment inserted "controlled access highway or" near the beginning of the section; and made a minor change in punctuation.

32-2009.1. Commercial enterprise or structure. No commercial enterprise or structure can be constructed or operated on the publicly-owned right of way of, or on any publicly-owned or publicly-leased land used for, or in connection with a controlled access highway or controlled access facility.

History: En. 32-2009.1 by Sec. 1, Ch. 134, L. 1959; amd. Sec. 8, Ch. 156, L. 1963.

Amendment

The 1963 amendment inserted "controlled access highway or" near the end of the section.

32-2010. Violations specified—penalty. After the opening of any new and additional controlled access highway or facility or after the designation and establishment of any existing street or highway as included therein, it shall be unlawful for any person (1) to drive a vehicle over, upon, or across any curb, central dividing section, or other separation or dividing line on controlled access highways or facilities; (2) to make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line; (3) to drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line; (4) to drive any vehicle into the controlled access highway or facility from a local service road except through an opening provided for that purpose in the dividing curb, or dividing section, or dividing line which separates such service road from the controlled access highway or facility proper; or (5) to construct, operate or maintain any road or private driveway connecting with a controlled access highway or controlled access facility without first obtaining permission in writing from the state highway commission and, except in the case of an interstate highway, from the local governing body having jurisdiction over such highway or facility. Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and upon arrest and conviction therefor shall be punished by a fine of not less than five dollars (\$5.00) nor more than one hundred dollars (\$100.00), or by imprisonment in the city or county jail for not less than five (5) days nor more than ninety (90) days, or by both fine and imprisonment.

History: En. Sec. 10, Ch. 104, L. 1955; amd. Sec. 9, Ch. 156, L. 1963.

Amendment

The 1963 amendment inserted "or" between "controlled access highway" and "facility" near the beginning of the section; inserted "highway(s) or" between "controlled access" and "facility(ies)" once in clause (1) and twice in clause (4) of the first sentence; added clause (5) to the first sentence; and made a minor change in phraseology.

Repealing Clause

Section 10 of Ch. 156, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 11 of Ch. 156, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

CHAPTER 21—UNIFORM ACT REGULATING TRAFFIC ON HIGHWAYS

- Section 32-2137. Traffic-control signal legend.
 32-2174. Vehicles approaching "Yield" sign.
 32-21-163. Unlawful operation by child under eighteen—concurrent original jurisdiction of district court and justice court—penalties—impounding of vehicle, when.
 32-21-164. Summons—issuing to child under eighteen.

32-2115. Intersection.

Nature of Roads Forming Intersection angle. *Rader v. Nicholls*, — M —, 373 P

An intersection is formed when two 2d 312, 313.
 publicly maintained ways join at any

32-2137. Traffic-control signal legend. Whenever traffic is controlled by traffic-control signals exhibiting the words "Go," "Caution," or "Stop," or exhibiting different colored lights successively one at a time, or with arrows, the following colors only shall be used and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) to (d). * * * [Same as parent volume.] ✓

(e) Red with Traffic Sign Legend—Right Turn on Red After Stop:

1. Vehicular traffic facing such signal and legend shall stop and then may cautiously enter the intersection only to make the turn indicated by the legend but shall yield the right of way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection.

2. No pedestrian facing such signal and legend shall enter the roadway until the green or "Go" is shown alone.

(f) Traffic Control Signal at Place Other Than Intersection:

1. In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their very nature can have no application.

2. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

History: En. Sec. 34, Ch. 263, L. 1955; **Amendment**
 amd. Sec. 1, Ch. 211, L. 1963.

The 1963 amendment inserted a new subsection (e) and redesignated former subsection (e) as (f).

32-2151. Drive on right side of roadway—exceptions.

Backing over Center-line decedent's traffic lane, defendant's driver

Where the evidence conclusively established that defendant's tractor-trailer was backed over the highway center-line into 504, 507.
v. Star Transfer Co., — M —, 376 P 2d

32-2152. Passing vehicles proceeding in opposite directions.

Cited in *Hurly v. Star Transfer Co.*,
 — M —, 376 P 2d 504, 507.

32-2156. Further limitations on driving to left of center, etc.

Contributory Negligence tributary negligence in collision with

Plaintiff driving to the left side of the roadway while within one hundred feet of or traversing an intersection in attempting to pass truck was guilty of con-
Rader v. Nicholls, — M —, 373 P 2d 312, 313.

Intersection

An intersection is formed when two publicly maintained ways join at any

angle. *Rader v. Nicholls*, — M —, 373 P 2d 312, 313.

32-2159. Driving on roadways laned for traffic.**Backing over Center-line**

Where the evidence conclusively established that defendant's tractor-trailer was backed over the highway center-line into

decendent's traffic lane, defendant's driver was negligent as a matter of law. *Hurly v. Star Transfer Co.*, — M —, 376 P 2d 504, 507.

32-2174. Vehicles approaching "Yield" sign. When the intersection is designated by the commission, or the local authority having jurisdiction, as a "Yield" intersection, the driver of a vehicle approaching the "Yield" sign shall slow to a speed of not more than fifteen (15) miles per hour and yield right of way to all vehicles approaching from the right or left on the intersecting roads, or streets, which are so close as to constitute an immediate hazard. If a driver is involved in a collision at an intersection or interferes with the movement of other vehicles after driving past a "Yield" sign, such collision or interference shall be deemed evidence of the driver's failure to yield right of way.

History: En. Sec. 71, Ch. 263, L. 1955; amd. Sec. 1, Ch. 96, L. 1963.

Effective Date

Section 2 of Ch. 96, Laws 1963 provided the act should be in effect after its passage and approval. Approved February 28, 1963.

Amendment

The 1963 amendment deleted "Right of Way" following "Yield" within the quotation marks in three places.

32-21-163. Unlawful operation by child under eighteen—concurrent original jurisdiction of district court and justice court—penalties—impounding of vehicle, when. The district courts and the justice courts of the state of Montana and the municipal and police courts of cities and towns shall have concurrent original jurisdiction in all proceedings concerning the unlawful operation of motor vehicles by children under the age of eighteen (18) years. Whenever, after a hearing before the court, it shall be found that a child under the age of eighteen (18) years has unlawfully operated a motor vehicle, the court may (a) impose a fine, not exceeding fifty dollars (\$50), provided such child shall not be imprisoned for failure to pay such fine, (b) may revoke the driver's license of such child, or suspend the same for such time as may be fixed by the court, and (c) may order any motor vehicle owned or operated by such child to be impounded by the probation officer for such time, not exceeding sixty (60) days, as shall be fixed by the court; provided, however, that if the court shall find that the operation of such motor vehicle was without the consent of the owner, then such vehicle shall not be impounded. Upon nonpayment of any fine herein provided for, the court may order that any motor vehicle owned by said child or operated by said child with the consent of the owner shall be impounded until the fine shall be paid, or may order that the driver's license of such child shall be taken up and held by the probation officer until payment of said fine, or may cause both said motor vehicle and said driver's license to be taken up and impounded until such fine shall be paid; but no child shall be committed to

or held in any detention facility or jail by reason of nonpayment of such fine.

History: En. Sec. 1, Ch. 215, L. 1959; amd. Sec. 1, Ch. 188, L. 1963.

Amendment

The 1963 amendment inserted "and the justice courts" and "and the municipal and police courts of cities and towns" in

the first sentence; substituted "concurrent original jurisdiction" for "exclusive original jurisdiction" in the first sentence; and added to clause (a) of the second sentence the words "provided such child shall not be imprisoned for failure to pay such fine."

32-21-164. Summons—issuing to child under eighteen. Whenever any child under the age of eighteen (18) years shall unlawfully operate a motor vehicle in the presence of any peace officer of any county, city or town, or in the presence of any state highway patrolman, such officer may deliver to said child a form of summons describing the nature of the offense, with instructions thereon to report to the district court or a justice court of the county or the municipal or police court of the city or town wherein the offense occurs; and the court shall be informed thereof by the delivery of a copy of said summons to the probation officer, who shall in turn deliver the same to the judge or justice of the peace.

History: En. Sec. 2, Ch. 215, L. 1959; amd. Sec. 2, Ch. 188, L. 1963.

Amendment

The 1963 amendment inserted "or a

justice court" and "or the municipal or police court of the city or town"; and substituted "judge or justice of the peace" for "district judge" at the end of the section.

TITLE 36—HUSBAND AND WIFE

Chapter 2. Conciliation law, 36-201 to 36-205.

CHAPTER 1—HUSBAND AND WIFE—MUTUAL OBLIGATIONS, POWERS AND PROPERTY RIGHTS

36-101. (5782) Mutual obligations of husband and wife.

Cross-Reference

Cause of action for alienation of affections abolished, sec. 17-1201.

Action for Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the result of negligent injury to her husband. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73.

36-110. (5791) Married women may prosecute actions.

Action for Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the re-

sult of negligent injury to her husband. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73.

36-128. (5809) May sue and be sued.

Action for Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the re-

sult of negligent injury to her husband. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73.

CHAPTER 2—CONCILIATION LAW

Section 36-201. Manner of citation.

36-202. Purposes—definitions—where applicable.

36-203. Conciliation court—judges—budget—conciliation counselors—probation officers—proceedings confidential.

36-204. Procedure.

36-205. Powers of the court.

36-201. Manner of citation. This act may be cited as the "Montana Conciliation Law."

History: En. Sec. 1, Ch. 238, L. 1963.

Title of Act

An act constituting the several district courts, courts of conciliation for the purpose of protecting the rights of children and to promote and protect the family life and the institution of matrimony by providing a means for reconciliation of spouses and the amicable settlement of domestic and family controversies, and specifically where minor children are involved; defining the jurisdiction of said courts and to establish such courts which requires a determination by the judge or judges of the district whether such conciliation court is necessary in said district; providing for the designation of a judge to handle conciliation cases, necessary

personnel, and payment of the expenses of said courts of conciliation by the respective counties in which said court is functioning; the manner of holding conferences, privacy of hearings, proceedings and recommendations; no fees to be charged, the hearings to be informal, stay of divorce proceedings for not to exceed thirty days to give the parties an opportunity for a reconciliation conference, transfer of cases to the conciliation court when it appears that the welfare of minors is going to be seriously affected and permitting the jurisdiction of the conciliation court where no minors are involved if it appears that a reconciliation may be had, granting the conciliation court the same powers as a district court under the Constitution of the state of Montana, Article

8, Section 1, section 93-301 to 93-321 inclusive, Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of judges of courts of conciliation.

36-202. Purposes—definitions—where applicable. (1) Purposes. The purposes of this chapter are to protect the rights of children and to promote the public welfare by preserving, promoting, and protecting family life and the institution of matrimony, and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies.

(2) Definitions. As used in this chapter "shall" is mandatory and "may" is permissive.

(3) Applicability of the Law—Determination by District Court. The provisions of this chapter shall be applicable only in counties in which the district court determines that the social conditions in the county and the number of domestic relations cases in the courts render the procedures herein provided necessary to the full and proper consideration of such cases and the effectuation of the purposes of this chapter. Such determination shall be made annually in the month of January or July by the judge of the district court in counties having only one such judge, and by a majority of the judges of the district court in counties having more than one such judge.

History: En. Sec. 2, Ch. 238, L. 1963.

36-203. Conciliation court—judges—budget—conciliation counselors—probation officers—proceedings confidential. (1) Exercise of Jurisdiction. Each district court shall exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of such jurisdiction shall be known and referred to as the "conciliation court."

(2) Selection of Judges. In counties having more than one judge of the district court, the judges of such court shall annually, in the month of January or July, designate at least one judge to hear all cases under this chapter. The judge or judges so designated shall hold as many sessions of the conciliation court in each week as are necessary for the prompt disposition of the business before the court.

(3) Transfer of Cases. Another district judge may be called in by the judge of the conciliation court to act as judge of the conciliation court during any period when the judge of the conciliation court is on vacation, absent, or for any reason unable to perform his duties. Any judge so appointed shall have all of the powers and authority of a judge of the conciliation court in cases under this chapter.

(4) Budget. The provisions of the county budget system, section[s] 16-1901 to 1911, inclusive, R.C.M. 1947, shall, except as provided by section 4, subsection 9 [36-204 (9)] of this act, be applicable to expenditures for the court of conciliation; provided, however, that the court may submit to the board of county commissioners the information required by section 16-1901 on or before July 1st of each year.

(5) Manner of Conciliation. The judge of the conciliation court may hear all matters invoked under this act or he may refer such matters to a pastor or director of any religious denomination to which the parties may

belong, psychiatrist, physician, attorney, social worker, or other person who is competent and qualified by training and experience in personal counseling. Such person shall be referred to herein as the conciliation counselor.

The conciliation counselor shall:

(a) Hold conciliation conferences with parties to, and hearings in, proceedings under this chapter, and make recommendations concerning such proceedings to the judge of the conciliation court.

(b) Cause such reports to be made, such statistics to be compiled, and such records to be kept as the judge of the conciliation court may direct.

(6) Probation Officers Duties. The probation officer in every county shall give such assistance to the conciliation court as the court may request to carry out the purposes of this chapter, and to that end the probation officer shall, upon request and with the consent of both parties, make investigations and reports as requested, and in cases pursuant to this chapter, shall exercise all the powers and perform all the duties granted or imposed by the laws of this state relating to probation or to probation officers.

(7) Privacy of Hearings. All district court hearings or conferences in proceedings under this chapter shall be held in private and the court shall exclude all persons except the officers of the court, the parties, their counsel and witnesses. Conferences may be held with each party and his counsel separately and in the discretion of the judge or counselor conducting the conference or hearing, all counsel may be excluded. All communications, verbal or written, from parties to the judge or counselor in a proceeding under this chapter shall be deemed made to such officer in official confidence.

The files of the conciliation court shall be closed. The petition, supporting affidavit, reconciliation agreement and any court order made in the matter may be opened to inspection by any party or his counsel upon the written authority of the judge of the conciliation court.

(8) Jurisdiction. The jurisdiction of the conciliation courts and the powers thereof shall be as provided in the Constitution of Montana, Article 8, Section 1, Chapter 3 [Title 93], Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of any judge of the conciliation court.

History: En. Sec. 3, Ch. 238, L. 1963.

36-204. Procedure. (1) Whenever any controversy exists between the spouses which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household, and there is any minor child of the spouses or of either of them whose welfare might be affected thereby, the conciliation court shall have jurisdiction over the controversy, and over the parties thereto and all persons having any relation to the controversy as further provided in this chapter.

(2) Prior to the filing of any action for divorce, annulment or separate maintenance, either spouse, or both spouses, may file in the conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the

affecting
as per 204

parties, or for amicable settlement of the controversy between the spouses, so as to avoid further litigation over the issue involved.

(3) The petition shall be captioned substantially as follows:

District Court of the State of Montana

For the County of _____

Upon the petition of ----- Petitioner	}	Petition for Conciliation (Under the Conciliation Court Law)
---	---	--

And concerning ----- ----- Respondents.	}	and -----
--	---	--------------

To the Conciliation Court:

(4) The petition shall:

(a) Allege that a controversy exists between the spouses and request the aid of the court to effect a reconciliation or an amicable settlement of the controversy.

(b) State the name and age of each minor child whose welfare may be affected by the controversy.

(c) State the name and address of the petitioner, or the names and addresses of the petitioners.

(d) If the petition is presented by one spouse only, name the other spouse as a respondent, and state the address of that spouse.

(e) Also name as a respondent any other person who has any relation to the controversy, and state the address of the person, if known to the petitioner.

(f) State such other information as the court may by rule require.

(5) The clerk of the court shall provide, at the expense of the county, blank forms for petitions for filing pursuant to this chapter. The probation officers of the county and the attaches and employees of the conciliation court shall assist any person in the preparation and presentation of any such petition, when any person requests such assistance. All public officers in each county shall refer to the conciliation court all petitions and complaints made to them in respect to controversies within the jurisdiction of the conciliation court.

(6) No Fees. No fee shall be charged by any officer for filing the petition, nor shall any fee be charged by any officer for the performance of any duty pursuant to this chapter.

(7) Time and Place of Hearings. The court shall fix a reasonable time and place for hearing on the petition, and shall cause such notice of the filing of the petition and the time and place of the hearing as it deems necessary to be given to the respondents. The court may, when it deems it necessary, issue a citation to any respondent requiring him to appear at the time and place stated in the citation, and may require the attendance of witnesses as in other civil cases.

(8) For the purpose of conducting hearings pursuant to this chapter,

the conciliation court may be convened at any time and place within the district, and the hearing may be had in chambers or otherwise, except that the time and place for hearing shall not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

(9) Hearings Informal. The hearing shall be conducted informally as a conference or series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues of the controversy. To facilitate and promote the purposes of this act the court may, with the consent of both of the parties to the proceeding, recommend or invoke the aid of physicians or psychiatrists, or other specialists or scientific experts, or of the pastor or director of any religious denomination to which the parties may belong. Such aid, however, shall not be at the expense of the court or of the county, unless the county commissioners of the county specifically provide and authorize such aid.

(10) Orders—Effective Time—Reconciliation Agreement. At or after hearing, the court may make such orders in respect to the conduct of the spouses and the subject matter of the controversy as the court deems necessary to preserve the marriage or to implement the reconciliation of the spouses, but in no event shall such orders be effective for more than thirty (30) days from the hearing of the petition, unless the parties mutually consent to a continuation of such time.

Any reconciliation agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

(11) During a period beginning upon the filing of the petition for conciliation and continuing until thirty (30) days after the hearing of the petition for conciliation, neither spouse shall file any action for divorce, annulment of marriage, or separate maintenance.

If, however, after the expiration of such period, the controversy between the spouses has not been terminated, either spouse may institute proceedings for divorce, annulment of marriage or separate maintenance. The pendency of a divorce, annulment, or separate maintenance action shall not operate as a bar to the instituting of proceedings for conciliation under this chapter.

(12) Stay of Divorce Proceedings—Where Conciliation Petition Filed First. Whenever any action for divorce, annulment of marriage, or separate maintenance is filed in the district court, and it appears to the court at any time during the pendency of the action that there is any minor child of the spouses or of either of them whose welfare may be adversely affected by the dissolution or annulment of the marriage or the disruption of the household, and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy, in accordance with the provisions of this chapter.

(13) Jurisdiction Where No Minors Involved. Whenever application is made to the conciliation court for conciliation proceedings in respect to a controversy between spouses, or a contested action for divorce, annul-

ment, or separate maintenance, but there is no minor child whose welfare may be affected by the results of the controversy, and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved, and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept and dispose of the case in the same manner as similar cases involving the welfare of children are disposed of. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto or having any relation thereto that it has under this chapter in similar cases involving the welfare of children.

History: En. Sec. 4, Ch. 238, L. 1963.

36-205. Powers of the court. The conciliation court shall have the same powers as the district court under the Constitution of the state of Montana, Article 8, Section 1, section[s] 93-301 to 93-321 inclusive, Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of judges of courts of conciliation.

History: En. Sec. 5, Ch. 238, L. 1963.

TITLE 37—INITIATIVE AND REFERENDUM

Chapter 1. Initiative and referendum, 37-104.1.

CHAPTER 1—INITIATIVE AND REFERENDUM

Section 37-104.1. Attorney general's summary of referred or initiative measures—placement on ballot.

37-104.1. Attorney general's summary of referred or initiative measures—placement on ballot. The secretary of state of the state of Montana prior to certifying and numbering of referendum, initiative or constitutional amendment to the several counties of Montana as provided by sections 37-105 and 23-1102 of the Revised Codes of Montana, 1947, shall transmit a copy of the measure to be voted upon to the attorney general of Montana. Within ten (10) days after the measure is filed with him, the attorney general shall provide and return to the secretary of state a statement in ordinary plain language explaining in not more than one hundred (100) words the general purpose of the measure submitted. The statement as prepared by the attorney general, shall be in addition to the legislative title of the measure. On the printing of the ballot, the statement of the attorney general shall precede the other title of the measure. In providing the statement, the attorney general shall give a true and impartial statement of the purpose of the measure in plain, easily understood language and in such manner as shall not be an argument or likely to create prejudice either for or against the measure.

History: En. Sec. 1, Ch. 22, L. 1963.

Title of Act

An act to require a true, plain and impartial statement of the meaning and purpose of any referendum, initiative or constitutional amendment submitted to the vote of the people of the state of Mon-

tana and repealing all acts and parts of acts in conflict therewith.

Repealing Clause

Section 2 of Ch. 22, Laws 1963 repealed all acts and parts of acts in conflict therewith.

TITLE 38—INSANE AND FEEBLE-MINDED

- Chapter 1. The Montana state hospital—management, 38-102, 38-104, 38-107 to 38-110, 38-119, 38-120.
2. Examination of persons mentally deranged—commitment, 38-207, 38-210.
 5. Convalescent leave of patients, 38-502, 38-504, 38-505.
 7. Alcoholism services center, 38-712 to 38-724.
 8. Montana state training school and hospital, 38-802, 38-804, 38-805, 38-815.
 9. Leases of farm land for state hospital and state penitentiary authorized, Repealed—Section 82, Chapter 266, Laws of 1963.
 10. State department of mental hygiene, 38-1002.
 11. Home for senile men and women, 38-1101, 38-1108.

CHAPTER 1—THE MONTANA STATE HOSPITAL—MANAGEMENT

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|---------|------------|---|
| Section | 38-102. | Management—state department of public institutions. |
| | 38-104. | Superintendent of state hospital. |
| | 38-107. | Department may send patient to friends. |
| | 38-108(1). | May contract with some other institution. |
| | 38-108(2). | May contract with some other institution. |
| | 38-109. | Discharge of patients. |
| | 38-110. | Maintenance of indigent persons on discharge. |
| | 38-119. | Insane person not indigent must be paid for. |
| | 38-120. | Receipt of nonresident insane pending return to home state. |

38-102. (1413) Management—state department of public institutions. The management, control, and supervision of the Montana state hospital located at Warm Springs, county of Deer Lodge, state of Montana, is hereby vested in the state department of public institutions.

History: Ap. p. Secs. 2260, 2261, Pol. C. 1895; re-en. Secs. 1111, 1112, Rev. C. 1907; amd. Sec. 1, Ch. 57, L. 1913; re-en. Sec. 1413, R. C. M. 1921; amd. Sec. 19, Ch. 266, L. 1963. Cal. Pol. C. Secs. 2136-2199.

Amendment

The 1963 amendment substituted "state department of public institutions" at the end of the section for "state board of commissioners for the insane, which consists of the governor, the secretary of state, and the attorney general, of which the governor is president and the secretary of state the secretary."

38-103. (1414) Repealed.

Repeal

This section (Sec. 2, Ch. 57, L. 1913), enumerating the powers and duties of

the board of the Montana state hospital, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-104. (1415) Superintendent of state hospital. A superintendent of the state hospital shall be administrative head of the state hospital.

The superintendent and one other employee of the state hospital to be named by the board, in addition to the salaries provided for shall be entitled to draw from the hospital commissary food supplies for their respective families, not to exceed, however, in value the sum of fifteen hundred dollars (\$1,500.00) per year for each family. Such food supplies so drawn shall be accounted for in the same manner as other supplies used at the state hospital.

History: En. Sec. 3, Ch. 57, L. 1913; re-en. Sec. 1415, R. C. M. 1921; amd. Sec. 1, Ch. 42, L. 1923; amd. Sec. 1, Ch. 149, L. 1929; amd. Sec. 1, Ch. 268, L. 1947; amd. Sec. 20, Ch. 266, L. 1963.

Amendment

The 1963 amendment completely re-

wrote the first paragraph; substituted "one other employee of the state hospital to be named by the board" near the beginning of the second paragraph for "the assistant superintendent"; and deleted a third paragraph. For previous text of first and third paragraphs, see parent volume.

38-105, 38-106. (1416, 1417) Repealed.

Repeal

These sections (Secs. 4, 5, Ch. 57, L. 1913), relating to the superintendent and

other staff members of the Montana state hospital, were repealed by Sec. 82, Ch. 266, Laws 1963.

38-107. (1418) Department may send patient to friends. The department of public institutions may, at the expense of the state, when satisfied it will be for the best interest of any insane person, send him to friends outside of the state.

History: En. Sec. 2280, Pol. C. 1895; re-en. Sec. 1121, Rev. C. 1907; re-en. Sec. 1418, R. C. M. 1921; amd. Sec. 21, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "The department of public institutions" at the beginning of the section for "The board."

38-108(1). (1419) May contract with some other institution. The department of public institutions may, when satisfied it will be for the best interest of any insane person in the state, send him to some other institution, with its consent, outside the state.

History: En. Sec. 2281, Pol. C. 1895; re-en. Sec. 1122, Rev. C. 1907; re-en. Sec. 1419, R. C. M. 1921; amd. Sec. 8, Ch. 213, L. 1963.

language of Ch. 213, Laws 1963; the language of Ch. 266 appears below as section 38-108(2).

Compiler's Note

This section was amended twice in 1963, once by Ch. 213 and once by Ch. 266. The two amendments may be inconsistent, in that Ch. 266 contains language that was deleted by Ch. 213; therefore, the compiler has set out the language of both amendatory acts. The above is the

Amendment

The 1963 amendment substituted "department of public institutions" for "board" at the beginning of the section; and deleted from the end of the section a clause reading, "and the expense of sending and supporting him at such institution must be paid by the state, providing such person is indigent."

38-108(2). (1419) May contract with some other institution. The department of public institutions may, when satisfied it will be for the best interest of any insane person in the state, send him to some other institution, with its consent, outside the state, and the expense of sending and supporting him at such institution must be paid by the state, providing such person is indigent.

History: En. Sec. 2281, Pol. C. 1895; re-en. Sec. 1122, Rev. C. 1907; re-en. Sec. 1419, R. C. M. 1921; amd. Sec. 22, Ch. 266, L. 1963.

piller has set out the language of both amendatory acts. The above is the language of Ch. 266, Laws 1963; the language of Ch. 213 appears as section 38-108(1).

Compiler's Note

This section was amended twice in 1963, once by Ch. 213 and once by Ch. 266. The two amendments may be inconsistent, in that Ch. 266 contains language that was deleted by Ch. 213; therefore, the com-

Amendment

Chapter 266, Laws 1963, substituted "The department of public institutions" at the beginning of the section for "The board."

38-109. (1421) Discharge of patients. The department of public institutions must cause to be discharged from the Montana state hospital any patient upon the written report of the hospital medical staff, that such patient is in satisfactory mental condition to be discharged. Such written report must be filed and kept in the office of the department, and every inmate on recovery must be ordered released, without requiring a sponsor.

History: En. Sec. 2283, Pol. C. 1895; re-en. Sec. 1124, Rev. C. 1907; re-en. Sec. 1421, R. C. M. 1921; amd. Sec. 1, Ch. 165, L. 1943; amd. Sec. 23, Ch. 266, L. 1963. Cal. Pol. C. Sec. 2189.

department of public institutions" at the beginning of the section and "the department" in the second sentence for "the board" in both places; and deleted "for the insane" following "Montana state hospital."

Amendment

The 1963 amendment substituted "The

38-110. Maintenance of indigent persons on discharge. Upon the discharge of any patient of the Montana state hospital, the department shall notify the board of public welfare of the county from which such patient was committed, and the said county board of public welfare shall at once ascertain whether the discharged patient is in financial need, and if such patient is found to be in financial need the county board of public welfare shall properly care for and maintain the discharged patient under the provision of the Public Welfare Act until such patient is able to care for himself or other provision has been made for such care.

History: En. Sec. 2, Ch. 165, L. 1943; amd. Sec. 24, Ch. 266, L. 1963.

tion to the financial aid required by section 1422" after "Montana state hospital"; and substituted "the department" for "the board" in the same place.

Amendment

The 1963 amendment deleted "in addi-

38-111. Repealed.

Repeal

This section (Sec. 3, Ch. 165, L. 1943; Sec. 1, Ch. 153, L. 1957), relating to the

medical examination of patients, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-118. (1429) Repealed.

Repeal

This section (Sec. 2291, Pol. C. 1895), relating to nonresident insane persons,

was repealed by Sec. 2, Ch. 198, Laws 1963 and by Sec. 10, Ch. 213, Laws 1963.

38-119. (1430) Insane person not indigent must be paid for. None but indigent persons must be received into the Montana state hospital unless their care and maintenance is paid or guaranteed by the parents, children, or guardians of such person.

History: En. Sec. 2292, Pol. C. 1895; re-en. Sec. 1133, Rev. C. 1907; re-en. Sec. 1430, R. C. M. 1921; amd. Sec. 25, Ch. 266, L. 1963.

clause which read, "and all money received by the contractor for the care and maintenance of such persons must be accounted for in his settlement with the board."

Amendment

The 1963 amendment deleted a final

38-120. Receipt of nonresident insane pending return to home state. An insane person, nonresident of this state, may be received into the Montana state hospital for a period not to exceed thirty (30) days pending return to the state of his residence.

History: En. Sec. 1, Ch. 198, L. 1963.

Repealing Clause

Title of Act

Section 2 of Ch. 198, Laws 1963 read "Section 38-118, R.C.M. 1947, is hereby repealed."

An act to permit reception of nonresident insane to state hospital pending return to state of residence and repealing section 38-118, Revised Codes of Montana, 1947.

CHAPTER 2—EXAMINATION OF PERSONS MENTALLY DERANGED
—COMMITMENT

Section 38-207. Forms of certificates.

38-210. Moneys of insane person—disposal of.

38-207. (1437) Forms of certificates. The certificate must be made in the form prescribed by, and if they can be had, upon blanks furnished by the state department of public institutions.

History: En. Sec. 2306, Pol. C. 1895; re-en. Sec. 1140, Rev. C. 1907; re-en. Sec. 1437, R. C. M. 1921; amd. Sec. 26, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" at the end of the section for "board of the commissioners for the insane."

38-210. (1440) Moneys of insane person—disposal of. When any person is adjudged to be insane and ordered committed to the Montana state hospital, or is adjudged to be in such a condition of mind that he should be placed in such hospital for observation, all moneys found on him at the time he is taken into custody must be certified to by the judge, and sent with such person to the hospital, to be delivered to the superintendent thereof, whose receipt therefor shall be taken by the officer or other person delivering him to the hospital, who must file such receipt with the clerk of the district court of the county in which the proceedings were had. If the amount exceeds one hundred dollars (\$100.00), the excess must be applied to the payment of the expenses of such person while in the hospital. If the amount is one hundred dollars (\$100.00) or less it must be kept and delivered to the person when discharged or released from the hospital or applied in payment of funeral expenses if such person dies while in such hospital. If any amount standing to the credit of any person paroled, discharged or released, or after payment of the funeral expenses of such person who dies while in such hospital, shall remain unclaimed for one (1) year after such parole, discharge, release or death, fifty per centum (50%) of such amount, but not in any event exceeding fifty dollars (\$50.00) shall be withdrawn from such account and placed in the agency fund in the state treasury, to be expended for indigent patients at such times and in such manner and for such purposes as may be prescribed by the superintendent of such hospital. Any balance remaining to the credit of any such person, shall be transmitted to the county treasurer of the county from which said person was sent, and if any sum remains after paying the costs of hearing, and transportation to the hospital, the balance shall be paid into the state treasury to the credit of the general fund.

History: Ap. p. Sec. 2309, Pol. C. 1895; amd. Sec. 6, p. 164, L. 1897; re-en. Sec. 1143, Rev. C. 1907; re-en. Sec. 1440, R. C. M. 1921; amd. Sec. 6, Ch. 117, L. 1939; amd. Sec. 2, Ch. 76, L. 1943; amd. Sec. 231, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the agency fund in the state treasury" for "the patients' deposit account, special account" in the fourth sentence.

38-214. (1444) Repealed.

Repeal

This section (Sec. 8, p. 165, L. 1897; Sec. 9, Ch. 117, L. 1939; Sec. 3, Ch. 76, L. 1943; Sec. 1, Ch. 49, L. 1955; Sec. 1,

Ch. 131, L. 1959), relating to the expense of maintenance of inmates of the Montana state hospital, was repealed by Sec. 10, Ch. 213, Laws 1963.

CHAPTER 3—TRANSFER OF STATE HOSPITAL PATIENTS TO STATE TRAINING SCHOOL AT BOULDER

38-304. Repealed.

Repeal

This section (Sec. 3, Ch. 10, L. 1943), relating to the expense of clothing per-

sons transferred to the state training school, was repealed by Sec. 10, Ch. 213, Laws 1963.

CHAPTER 4—EXAMINATION AND COMMITMENT OF PERSON AS MENTALLY DERANGED BUT NOT DANGEROUS—VOLUNTARY APPLICATION FOR ADMISSION

38-409. Repealed.

Repeal

This section (Sec. 9, Ch. 157, L. 1943), relating to investigations of the financial

worth of persons committed or admitted to the Montana state hospital, was repealed by Sec. 10, Ch. 213, Laws 1963.

38-411, 38-412. Repealed.

Repeal

These sections (Secs. 2, 3, Ch. 129, L. 1955), relating to the charges for care and maintenance of persons voluntarily

admitted to the Montana state hospital, were repealed by Sec. 10, Ch. 213, Laws 1963.

CHAPTER 5—CONVALESCENT LEAVE OF PATIENTS

Section 38-502. Convalescent leave of patients from Montana state hospital.

38-504. Termination of convalescent leave.

38-505. Report by person under whom patient is placed on convalescent leave.

38-502. Convalescent leave of patients from Montana state hospital. The superintendent of the Montana state hospital may grant a convalescent leave to a patient under general conditions prescribed by the state department of public institutions.

History: En. Sec. 2, Ch. 145, L. 1941; amd. Sec. 1, Ch. 152, L. 1957; amd. Sec. 27, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" at the end of the section for "state board of commissioners for the insane."

38-504. Termination of convalescent leave. All such patients, while on convalescent leave, shall remain in the legal custody, and under the

control of the state department of public institutions, and at any time during such convalescent leave, upon evidence satisfactory to the superintendent or to the state department of public institutions, that convalescent leave should terminate, such patient must be returned to the Montana state hospital. The written order of the state department of public institutions, certified by the superintendent of the hospital, shall be sufficient warrant to any officer to retake and return such patient to actual custody in the Montana state hospital.

History: En. Sec. 4, Ch. 145, L. 1941; amd. Sec. 3, Ch. 152, L. 1957; amd. Sec. 28, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" in three places for "state board of commissioners for the insane."

38-505. Report by person under whom patient is placed on convalescent leave. The person to whom such person shall be placed on convalescent leave shall report the physical, moral and mental condition of the patient to the superintendent either in person or by writing as often and as fully as the superintendent may require, and subject to such recommendations and regulations as the state department of public institutions may determine. In case of failure so to report on request, the inmate may be returned to the Montana state hospital. The patient shall be accessible to representatives of the hospital.

History: En. Sec. 5, Ch. 145, L. 1941; amd. Sec. 4, Ch. 152, L. 1957; amd. Sec. 29, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" for "state board of commissioners for the insane" near the end of the first sentence.

CHAPTER 7—ALCOHOLISM SERVICES CENTER

- Section 38-712. Definition of terms.
 38-713. Alcoholism services center established—services provided.
 38-714. Control of services center—integration into state hospital functions.
 38-715. Budget requests.
 38-716. Functions of services center.
 38-717. Assignment and employment of staff.
 38-718. Gifts and donations to center.
 38-719. Co-operation with other public agencies.
 38-720. Admission of persons to services center.
 38-721. Detention of patients—release, discharge, and leave.
 38-722. Costs and expenses.
 38-723. Charges for care and maintenance.
 38-724. Rules and regulations.

38-701 to 38-711. (1445 to 1455) Repealed.

Repeal

These sections (Secs. 1, 2, 4 to 12, Ch. 139, L. 1911; Secs. 1, 2, Ch. 130, L. 1955) relating to the state hospital for inebriates, were repealed by Sec. 15, Ch. 112, Laws

1963. Section 38-702 was also repealed by Sec. 82, Ch. 266, Laws 1963, and sections 38-707 and 38-708 were also repealed by Sec. 10, Ch. 213, Laws 1963.

38-712. Definition of terms. As used in this act "alcoholism" means a chronic illness or disorder of behavior characterized by repeated drinking of alcoholic beverages to an extent which endangers the drinker's health,

interpersonal relations or economic functioning or to an extent which endangers the public health, welfare or safety.

An "alcoholic" is a person suffering from the illness of alcoholism.

History: En. Sec. 1, Ch. 112, L. 1963.

Title of Act

An act providing for the establishment, control, financing, conduct and maintenance of a department of Montana state hospital which will provide services for the custody, care, treatment and reha-

bilitation of persons suffering from the illness of alcoholism; provide for the admission, detention, costs, maintenance and release of patients; provide for research into the causes of alcoholism; provide for prevention of alcoholism; and repealing Chapter 7 of Title 38 of the Revised Codes of Montana as amended.

38-713. Alcoholism services center established — services provided.

There shall be established at Montana state hospital a department to be known as the Montana alcoholism services center which shall provide custody, care, diagnosis, treatment, rehabilitation, consultation, information, research, prevention and such other services as shall be necessary in the field of alcoholism.

History: En. Sec. 2, Ch. 112, L. 1963.

38-714. Control of services center—integration into state hospital functions. The superintendent of the Montana state hospital shall have immediate control and charge of the Montana alcoholism services center and shall be responsible for discharging the duties required by this act and shall integrate the Montana alcoholism services center into the established functions of the hospital in a manner consistent with his responsibilities for the hospital as a whole.

History: En. Sec. 3, Ch. 112, L. 1963.

38-715. Budget requests. The superintendent of Montana state hospital shall include in the budget request stipulation for sufficient funds to execute the provisions of this act.

History: En. Sec. 4, Ch. 112, L. 1963.

38-716. Functions of services center. The Montana alcoholism services center shall provide custody, care, diagnosis, treatment and rehabilitation to persons in Montana who seek, or are required to seek, relief from the illness of alcoholism or the complications thereof; furnish consultation, information, guidance and co-operation to Montana communities and citizens committees who may seek assistance in establishing local alcoholism treatment and rehabilitation services; act as a state alcoholism information-consultation center for the accumulation and dissemination of scientific information on alcoholism to all agencies, groups and individuals, public or private, who may require or seek such services; act as a center for the initiation, encouragement and co-ordination of practical research on alcoholism in Montana aimed at improving treatment, rehabilitation and prevention techniques or services; and provide full co-operation to those state agencies charged by law with the responsibility for public education on the effects of alcohol on the human system and the illness of alcoholism.

History: En. Sec. 5, Ch. 112, L. 1963.

38-717. Assignment and employment of staff. The superintendent of the state hospital may assign to the Montana alcoholism services center, on a full or part-time basis, the services of professional personnel and employees of the hospital and may also employ such additional alcoholism program administrators, counselors, therapists and other specialists as he may deem necessary for the execution of this act. Such alcoholism specialists shall be classified as professional personnel of Montana state hospital.

History: En. Sec. 6, Ch. 112, L. 1963.

38-718. Gifts and donations to center. The Montana state hospital may accept or refuse on behalf and in the name of the state of Montana any grant, gift, donation, legacy or bequest, however it be created, from the United States government or agencies thereof, from agencies within or without the state or from any party and for any purpose whatsoever consistent with the provisions of this act. Such moneys or property shall be received and held by the state of Montana to be used in accordance with such terms and conditions as were imposed when the gift was created. Any such moneys or property shall not revert to the general fund at the close of the biennium.

History: En. Sec. 7, Ch. 112, L. 1963.

38-719. Co-operation with other public agencies. The superintendent on behalf of the center may enter into co-operative agreements with other state agencies and departments to further the work of the center. Consistent with their authority and responsibility all state agencies may co-operate with the superintendent in the administration of the provisions of this act.

History: En. Sec. 8, Ch. 112, L. 1963.

38-720. Admission of persons to services center. All persons requiring or requesting admission to the Montana alcoholism services center shall be admitted in the manner provided by law for the admission of any person to Montana state hospital.

History: En. Sec. 9, Ch. 112, L. 1963.

38-721. Detention of patients—release, discharge, and leave. All patients of the center may be detained for whatsoever length of time as may be specified in the commitment procedure and form. However, the superintendent of the state hospital may grant an earlier release, discharge or convalescent leave according to the powers granted him in the laws, rules, regulations and procedures in effect for all patients of Montana state hospital.

History: En. Sec. 10, Ch. 112, L. 1963.

38-722. Costs and expenses. All costs and expenses incurred in the examination, commitment and transportation of an alcoholic to the center shall be paid in the manner provided by law for the examination, commitment and transportation of any person to Montana state hospital.

History: En. Sec. 11, Ch. 112, L. 1963.

38-723. Charges for care and maintenance. The charges for care and maintenance of all patients of the center shall be in the same amount and collectible in the same manner as provided for by law for all patients of Montana state hospital.

History: En. Sec. 12, Ch. 112, L. 1963.

38-724. Rules and regulations. The rules and regulations in force at Montana state hospital shall be the rules and regulations for the Montana alcoholism services center.

History: En. Sec. 13, Ch. 112, L. 1963.

Separability Clause

Section 14 of Ch. 112, Laws 1963 read "If any clause, sentence, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined and limited in

its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment is rendered."

Repealing Clause

Section 15 of Ch. 112, Laws 1963 read "Chapter 7 of Title 38 of the Revised Codes of Montana, as amended, and all other acts or parts of acts in conflict with this act are hereby repealed."

CHAPTER 8—MONTANA STATE TRAINING SCHOOL AND HOSPITAL

Section 38-802. Purposes and objects of school.

38-804. Powers and duties of superintendent.

38-805. Eligibility for admission—exclusions.

38-815. Cost of hearing and transportation of persons admitted to school.

38-801. Repealed.

Repeal

This section (Sec. 1, Ch. 183, L. 1943; Sec. 1, Ch. 37, L. 1959), relating to the

establishment of the Montana state training school and hospital, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-802. Purposes and objects of school. The purpose and object of the state training school and hospital shall be the mental, moral and physical education and training of subnormal persons whose defects prevent them from receiving proper instruction and training in the public schools, or who are so mentally deficient that they are incapable of managing themselves or their affairs independently with ordinary prudence or of being taught to do so, or who require control and education for their own welfare and the welfare of others, and minors whose intelligence will not develop without such care; epileptics and subnormal adults whose defects prevent them from taking care of themselves or their property, or who, from social standards, are a menace to society.

History: En. Sec. 2, Ch. 183, L. 1943; amd. Sec. 54, Ch. 266, L. 1963.

state training school and hospital" for "such school" near the beginning of the section.

Amendment

The 1963 amendment substituted "the

38-803. Repealed.

Repeal

This section (Sec. 3, Ch. 183, L. 1943), relating to the powers and duties of the

state board of education, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-804. Powers and duties of superintendent. The superintendent of the school, who is its administrative head, shall provide for the maintenance

nance of a school department for the instruction and training of those inmates who are capable of being benefited by school instruction, and a custodial department for the care and custody of those who are not capable of being benefited by such school instruction, and may provide for giving any or all of the inmates of the school such instruction and training in unskilled labor, manual training, arts, crafts and trades as may be deemed suitable for such persons by the state department of public institutions.

History: En. Sec. 4, Ch. 183, L. 1943; amd. Sec. 55, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "who is its administrative head" for "under the

direction of the state board of education" near the beginning of the section; and substituted "the state department of public institutions" for "said state board of education" at the end of the section.

38-805. Eligibility for admission—exclusions. There shall be admitted to the training school, in accordance with the provisions of this act, and such rules and regulations as may be adopted and provided by the state department of public institutions with regard thereto, the following persons, if they have been residents of this state for at least one (1) year immediately preceding application for admission: Subnormal persons whose defects prevent them from receiving proper instruction and training in the public schools, or who are so mentally deficient that they are incapable of managing themselves or their affairs independently with ordinary prudence or of being taught to do so, or who require control and education for their own welfare and the welfare of others, and minors whose intelligence will not develop without such care; epileptics and subnormal persons whose defects prevent them from taking care of themselves or their property, or who, from social standards, are a menace to society. Provided, however, that no person who is insane, or who requires hospitalization, or who is dangerously diseased in body, or who is suffering from any infectious or contagious disease, or of confirmed immorality, shall be admitted to such school.

History: En. Sec. 5, Ch. 183, L. 1943; amd. Sec. 56, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state

department of public institutions" for "state board of education" in the first part of the section.

38-808, 38-809. Repealed.

Repeal

These sections (Secs. 8, 9, Ch. 183, L. 1943; Sec. 1, Ch. 186, L. 1953; Sec. 1,

Ch. 73, L. 1959), relating to payment of expenses by inmates or their parents, were repealed by Sec. 10, Ch. 213, Laws 1963.

38-809.1. Repealed.

Repeal

This section (Sec. 2, Ch. 73, L. 1959), relating to county investigation of the financial condition of persons responsible

for the expense of maintenance of inmates of the school, was repealed by Sec. 10, Ch. 213, Laws 1963.

38-812. Repealed.

Repeal

This section (Sec. 12, Ch. 183, L. 1943; Sec. 2, Ch. 186, L. 1953; Sec. 3, Ch. 73, L.

1959), relating to orders for support of inmates of the school, was repealed by Sec. 10, Ch. 213, Laws 1963.

38-815. Cost of hearing and transportation of persons admitted to school. The costs of hearing and transportation of persons admitted to the school shall be paid by the county from which admitted out of its poor fund.

History: En. Sec. 15, Ch. 183, L. 1943; amd. Sec. 9, Ch. 213, L. 1963.

Amendment

The 1963 amendment deleted four sentences requiring reimbursement of expenses by parents, guardian, or relatives; for previous text, see parent volume.

Repealing Clause

Section 10 of Ch. 213, Laws 1963 read "Sections 38-118, 38-214, 38-304, 38-409, 38-411, 38-412, 38-707, 38-708, 38-808, 38-809, 38-809.1, 38-812, 80-211, 80-212 and 80-213, R. C. M. 1947, are repealed."

38-817, 38-818. Repealed.

Repeal

These sections (Secs. 17, 18, Ch. 183, L. 1943), relating to the executive board of the training school, and containing a

repeal of early laws pertaining to the school, were repealed by Sec. 82, Ch. 266, Laws 1963.

CHAPTER 9—LEASES OF FARM LAND FOR STATE HOSPITAL AND STATE PENITENTIARY AUTHORIZED

(Repealed—Section 82, Chapter 266, Laws of 1963)

38-901, 38-902. Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 209, L. 1943), relating to leases of farm land for

the state hospital and state prison, were repealed by Sec. 82, Ch. 266, Laws 1963.

CHAPTER 10—STATE DEPARTMENT OF MENTAL HYGIENE

Section 38-1002. Director and staff.

38-1002. Director and staff. The superintendent of the state hospital shall act as the director of said department and shall have immediate supervision over the operation thereof. In addition to the director, the staff of said department shall consist of such medical assistants and other employees of the state hospital as may be designated by the director, and such other medical specialists, psychologists, and social workers as may be appointed either permanently or for temporary periods by the director with the approval of the state department of public institutions.

History: En. Sec. 2, Ch. 103, L. 1947; amd. Sec. 30, Ch. 266, L. 1963.

Amendment

The 1963 amendment deleted "the assistant superintendent of the state hos-

pital" which followed "shall consist of" in the second sentence; and substituted "state department of public institutions" at the end of the section for "state board of commissioners for the insane."

CHAPTER 11—HOME FOR SENILE MEN AND WOMEN

Section 38-1101. Definitions.

38-1108. Transfer of patients from state hospital to home.

38-1101. Definitions. The following words and phrases when used in this act, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section.

(a) "Senile person" means any person who by reason of unsoundness of mind due to advanced years, is in such condition of mind and body as to be a fit subject for care and treatment in a home for senile persons; except that no person who is afflicted with insanity, epilepsy or feeble-mindedness shall be regarded as a senile person, unless he is senile as above defined.

(b) "Superintendent" means the administrative head of the home for senile men and women.

(c) "Home" means the home for senile men and women.

(d) "Patient" means any person for whose commitment as a senile person, proceedings have been instituted or completed.

History: En. Sec. 6, Ch. 206, L. 1949;
amd. Sec. 57, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "administrative head" for "superintendent" in paragraph (b).

38-1108. Transfer of patients from state hospital to home. The superintendent of the hospital at Warm Springs, Montana, is authorized to have examinations of the patients at that institution made by competent doctors for the purpose of ascertaining whether some patients there should be transferred to the home, and if as a result of such examinations any persons are found to be senile, the state department of public institutions is authorized to order their transfer from the state hospital at Warm Springs, Montana, to the home.

History: En. Sec. 13, Ch. 206, L. 1949;
amd. Sec. 3, Ch. 230, L. 1959; amd. Sec.
58, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" for "state board of examiners of the state of Montana" near the end of the section.

TITLE 40—INSURANCE AND INSURANCE COMPANIES

- Chapter 27. The commissioner of insurance, 40-2717.
28. Authorization of insurers and general requirements, 40-2821, 40-2822.
39. Group life insurance, 40-3905.1.
44. Casualty insurance contracts, 40-4402.

CHAPTER 27—THE COMMISSIONER OF INSURANCE

Section 40-2717. Examination expense.

40-2717. Examination expense. (1). * * * [Same as parent volume.] ✓

(2) The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received pursuant to subsection (1) above.

(3). * * * [Same as parent volume.] ✓

History: En. Sec. 36, Ch. 286, L. 1959; **Amendment**
amd. Sec. 72, Ch. 147, L. 1963.

The 1963 amendment rewrote subsection (2). For previous text, see parent volume.

CHAPTER 28—AUTHORIZATION OF INSURERS AND GENERAL REQUIREMENTS

Section 40-2821. Tax.

40-2822. Resident agent required—countersignature—records—exceptions.

40-2821. Tax. (1). * * * [Same as parent volume.] ✓

(2) Coincident with the filing of the tax report referred to in subsection (1) above, each such insurer shall pay to the commissioner a tax upon such net premiums, the tax to be computed at the rate of two per cent (2%) of such premiums; provided that for each of the calendar years 1963 and 1964 the tax shall be computed at the rate of two and one-quarter per cent (2¼%) of such premiums.

Provided, that where any insurer has not less than fifty per cent (50%) of its paid-in capital stock invested in Montana securities, the insurer shall be allowed to deduct whatever tax it may have already paid to the state of Montana and its political subdivisions, during the same calendar year as to which premium tax is being paid, from the amount otherwise due under this section. For the purpose of this provision "paid-in capital stock" as to a mutual or reciprocal insurer shall be deemed to be an amount equal to ten per cent (10%) of the insurer's assets; and "Montana securities" shall be deemed to include only general obligations of the state of Montana or of its political subdivisions, mortgage loans secured by a first lien upon real estate located in Montana, and real estate located in Montana owned by the insurer, all if otherwise lawful investments of the insurer under this code.

(3) to (8). * * * [Same as parent volume.] ✓ *See P.V.*

History: En. Sec. 66, Ch. 286, L. 1959;
amd. Sec. 1, Ch. 160, L. 1961; amd. Sec.
1, Ch. 78, L. 1963.

Amendment

The 1963 amendment substituted "1963 and 1964" for "1961 and 1962" in the proviso to the first paragraph of subsection (2).

40-2822. Resident agent required—countersignature—records—exceptions. (1) and (2). * * * [Same as parent volume.] ✓

(3) This section shall not apply to:

(a) Reinsurance.

(b) Life insurance, disability insurance or annuity contracts.

(c) Insurance of the rolling stock, vessels or aircraft of any common carrier in interstate or foreign commerce, or of any vehicle principally garaged and used in another state, or covering any liability or other risks incident to the ownership, maintenance or operation thereof.

(d) Insurance of property in course of transportation interstate or in foreign trade, or any liability or risk incident thereto.

(e) Insurance of wet marine and transportation risks.

(f) With respect to countersignature to policies issued through agents compensated only by salary or issued by insurers not using agents in the general solicitation of business.

(g) Bid bonds, as required under section 6-501, R.C.M. 1947.

(4). * * * [Same as parent volume.] ✓

History: En. Sec. 67, Ch. 286, L. 1959;
amd. Sec. 1, Ch. 72, L. 1963.

Amendment

The 1963 amendment added clause (g) to subsection (3).

CHAPTER 39—GROUP LIFE INSURANCE

Section 40-3905.1. State employee groups.

40-3905.1. State employee groups. All departments, bureaus, boards, commissions and agencies of the state of Montana are hereby authorized upon approval by a two-thirds ($\frac{2}{3}$) vote of the officers and employees of such departments, bureaus, boards, commissions and agencies to enter into group hospitalization, medical, health, accident and/or group life insurance contracts or plans for the benefit of their officers, employees and their dependents. The premiums required from time to time to maintain such insurance in force shall be paid by the insured officers and employees, and the auditor shall deduct said premiums from the salary or wages of each officer or employee who elects to become insured, on the officer or employee's written order, and issue his warrant therefor to the insurer. For the purpose of this act, the plans of health service corporations for defraying or assuming the cost of professional services of licentiates in the field of health, or the services of hospitals, clinics or sanitariums, or both professional and hospital services, shall be construed as group insurance, and the dues payable under such plans shall be construed as premiums therefor.

History: En. Sec. 1, Ch. 248, L. 1963.

insurance for state officers and employees and providing for payroll deductions.

Title of Act

An act relating to group life and health

Effective Date

Section 2 of Ch. 248, Laws 1963 provided the act should be in effect from

and after its passage and approval. Approved March 11, 1963.

CHAPTER 44—CASUALTY INSURANCE CONTRACTS

Section 40-4402. Sovereign immunity defense prohibited when liability insured—reduction of award to policy limits.

40-4402. Sovereign immunity defense prohibited when liability insured—reduction of award to policy limits. Whenever an insurer accepts any premium, money or other consideration from a political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity for casualty or liability insurance, neither such insured nor insurer shall raise the defense of sovereign or governmental immunity in any damage action brought against such insured or insurer, and any agreement in the insurance contract permitting the defense of sovereign or governmental immunity is hereby declared void. No attempt shall be made in the trial of an action brought against such political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity, to suggest the existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of plaintiff. If the court shall determine that the defendant could have successfully raised the defense of sovereign or governmental immunity, and if the verdict exceeds the limits of the applicable insurance, the court shall reduce the amount of such judgment or award to a sum equal to the applicable limit stated in the policy.

History: En. Sec. 1, Ch. 240, L. 1963.

Title of Act

An act prohibiting the defense of sovereign immunity where public bodies are insured; prohibiting the suggestion of insurance coverage in actions against public bodies, and providing for the reduction of awards to policy limits where

sovereign immunity defense could have been successfully raised; repealing all acts and parts of acts in conflict herewith.

Repealing Clause

Section 2 of Ch. 240, Laws 1963 repealed all acts and parts of acts in conflict therewith.

REVISED CODES OF MONTANA

VOLUME 3

Part 2

1963 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 3 (PART 2) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 3
(PART 2) THROUGH VOLUME 377, PACIFIC
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REVISED CODES OF MONTANA

AN ACT

TO

REVISE THE LAWS OF THE STATE OF MONTANA

THE LAWS OF THE STATE OF MONTANA, AS REVISED AND
CORRECTED BY THE COMMISSIONERS OF THE
LEGISLATIVE COUNCIL, IN THE YEAR 1963, ARE
HEREBY REPRODUCED IN THE FOLLOWING VOLUME

by THE ALLEN SMITH COMPANY

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NEW LAWS IN VOLUME 3 (Part 2)

For index see pocket supplement to Replacement Volume 9

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MONTANA REVISED CODES

TITLE 41—LABOR

- Chapter 12. Apprenticeship council and contracts, 41-1201, 41-1202.
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CHAPTER 12—APPRENTICESHIP COUNCIL AND CONTRACTS

- Section 41-1201. Apprenticeship council.
41-1202. Duties of apprenticeship council.

41-1201. Apprenticeship council. (a) The governor of the state of Montana shall appoint an apprenticeship council, which shall be a part of the department of labor and industry, and shall consist of six (6) members, three (3) of whom shall be appointed from and be representative of active employers employing persons in recognized apprenticeable trades, and three (3) of whom shall be appointed from and be representative of active employee organizations whose members are employed in recognized apprenticeable trades. The terms of office of the members of the apprenticeship council first appointed by the governor of the state of Montana shall be as follows: One (1) representative each of employers and employees shall be appointed for one (1) year, two (2) years and three (3) years respectively. After the expiration of the original terms, each member shall be appointed by the governor of the state of Montana for a term of three (3) years. Each member shall hold office until his successor is appointed and has qualified, and any vacancy shall be filled by appointment by the governor of the state of Montana for the unexpired portion of the term. The commissioner of labor and industry, the state official who has been designated by the state board for vocational education as being in charge of trade and industrial education and the state official who has immediate charge of the state public employment service shall be ex officio members of said council without vote. The council shall elect a chairman and vice-chairman from its voting membership, one (1) of which shall be a representative of employers and one (1) shall be a representative of employees, and each shall hold office for a term of one (1) year and until his successor is elected.

(b) to (d). * * * [Same as parent volume.] ✓

(e) The commissioner of labor and industry may, subject to the approval of the appointed members of the council, appoint a director of apprenticeship and such other clerical, technical and professional staff as shall be necessary to carry out the provisions of this act. The director of apprenticeship shall serve as the secretary of the council, without a vote.

History: En. Sec. 1, Ch. 149, L. 1941; Ch. 183, L. 1957; amd. Sec. 1, Ch. 160, L. amd. Sec. 1, Ch. 99, L. 1947; amd. Sec. 1, 1963.

Amendment

The 1963 amendment completely re-wrote subsection (a), for previous version

of which see parent volume; and added subsection (e).

41-1202. Duties of state apprenticeship council. The state apprenticeship council by a majority vote, shall:

(1) encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this act;

(2) register such apprenticeship agreements as are in the best interests of the apprenticeship and conform to the standards established by or in accordance with this act;

(3) keep a record of apprenticeship agreements and upon performance thereof issue certificates of completion of apprenticeship;

(4) terminate or cancel any apprenticeship agreements in accordance with the provisions of such agreements; and who

(5) may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure.

Related and supplemental instruction for apprentices, co-ordination of instruction with job experiences, and the selection and training of teachers and co-ordinators for such instruction shall be the responsibility of state and local boards responsible for vocational education.

History: En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963.

sentence which read, "The voting members of the apprenticeship council are authorized to appoint such other personnel as may be necessary to aid the apprenticeship council in the execution of their functions under this act."

Amendment

The 1963 amendment deleted a final

CHAPTER 16—DEPARTMENT OF LABOR AND INDUSTRY

Section 41-1603. Commissioner of labor and industry—term—salary—oath—bond.

41-1603. Commissioner of labor and industry—term—salary—oath—bond. The term of office of the commissioner of labor and industry appointed at this time shall terminate on March 4, 1953; and, the term of office of the commissioner of labor and industry appointed thereafter shall be four (4) years and until his successor is appointed and qualified. The commissioner shall receive an annual salary of not more than seven thousand five hundred dollars (\$7,500), payable monthly. Before entering on the duties of his office, he must take and subscribe to the oath of office prescribed by section 1, article XIX of the Montana Constitution and execute an official bond in the amount of one thousand dollars (\$1,000).

History: En. Sec. 3, Ch. 177, L. 1951; amd. Sec. 1, Ch. 27, L. 1957; amd. Sec. 2, Ch. 225, L. 1963.

Amendment

The 1963 amendment substituted the provision for a maximum salary of \$7,500 for a provision fixing the salary at \$6,000.

TITLE 42—LANDLORD AND TENANT—HIRING

CHAPTER 2—HIRING OF REAL PROPERTY—OF PERSONAL PROPERTY

42-203. (7743) Term of hiring when no limit is fixed.

Construction of Oral Farm Lease

Judgment for tenant in action for construction of an oral farm lease was reversed and the case was remanded for a new trial where the evidence was insufficient to show either a mutual agreement or usage and the record was completely confused as to when the lease commenced. *Enott v. Hinkle*, — M —, 369 P 2d 413, 414.

Notice to Quit

Landlord could not maintain an action for unlawful detainer where notice to quit was not given to tenant thirty days prior to expiration of year to year tenancy. *Roseneau Foods, Inc. v. Coleman*, — M —, 374 P 2d 87, 91.

Oral Lease

Under this section it is possible to have an oral lease for at least one year without an expression as to time therein. This is consistent with section 13-606, statute of frauds, which voids an oral agreement for the leasing of realty of a period longer than one year. *Roseneau Foods, Inc. v. Coleman*, — M —, 374 P 2d 87, 89.

Entry by a tenant under an invalid oral lease may create a tenancy from year to year, month to month, or a tenancy at will depending upon the circumstances. *Roseneau Foods, Inc. v. Coleman*, — M —, 374 P 2d 87, 89.

42-205. (7745) Renewal of lease by lessee's continued possession.

Notice to Quit

Where notice to quit was not given by landlord to tenant thirty days prior to expiration of year to year tenancy, tenancy was deemed to be renewed for another year and unlawful detainer action could not be maintained by landlord. *Roseneau Foods, Inc. v. Coleman*, — M —, 374 P 2d 87, 91.

42-206. (7746) Notice to quit.

Time for Giving Notice

An action in unlawful detainer cannot be maintained under section 93-9703 if the tenant is lawfully in possession under a tenancy from year to year without first

Presumption as to Term

When tenant, pursuant to an oral agreement, entered into possession of property on April 1, 1957 to conduct a meat processing and selling business, his hiring of the property was presumed to be for one year from its commencement. *Roseneau Foods, Inc. v. Coleman*, — M —, 374 P 2d 87, 89.

The presumption that hiring is to be for one year is a rebuttable presumption. If the presumption is not controverted, the facts must be found according to the presumption. If it is controverted, the presumption must be given weight as evidence. *Roseneau Foods, Inc. v. Coleman*, — M —, 374 P 2d 87, 90.

Tenancy from Month to Month

Payment of a monthly rental does not compel the conclusion that a tenancy is from month to month where other facts indicate to the contrary. *Roseneau Foods, Inc. v. Coleman*, — M —, 374 P 2d 87, 90.

Tenancy from Year to Year

Where tenant hired property for meat business under an oral agreement the tenancy was initially for a year with implied renewals for one year resulting in a tenancy from year to year. *Roseneau Foods, Inc. v. Coleman*, — M —, 374 P 2d 87, 90.

Tenancy from Year to Year

Where property was hired for meat business under section 42-203 the tenancy was initially for a year with implied renewal for one year resulting in a tenancy from year to year. *Roseneau Foods, Inc. v. Coleman*, — M —, 374 P 2d 87, 90.

giving notice thirty days prior to the anniversary date of the tenancy. *Roseneau Foods, Inc. v. Coleman*, — M —, 374 P 2d 87, 91.

TITLE 43—LEGISLATURE AND ENACTMENT OF LAWS

Chapter 3. The powers, duties and compensation of members, officers and employees of the legislative assembly, 43-310.

CHAPTER 3—THE POWERS, DUTIES AND COMPENSATION OF MEMBERS, OFFICERS AND EMPLOYEES OF THE LEGISLATIVE ASSEMBLY

Section 43-310. Per diem and mileage of members.

43-310. (74) Per diem and mileage of members. Members of the legislative assembly hereafter elected shall receive twenty dollars (\$20.00) per day, payable weekly, during the session of the legislative assembly, and eight cents (8¢) per mile for each mile of travel to and from their residences and the place of holding the session, by the nearest traveled route.

History: En. Sec. 220, Pol. C. 1895; re-en. Sec. 77, Rev. C. 1907; amd. Sec. 1, Ch. 45, L. 1909; re-en. Sec. 74, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1955; amd. Sec. 1, Ch. 32, L. 1963. Cal. Pol. C. Sec. 266.

Amendment

The 1963 amendment increased the mileage allowance from seven to eight cents per mile.

TITLE 44—LIBRARIES

- Chapter 2. County and regional free libraries, 44-213.
4. State law library, 44-410, 44-412.
5. Historical society—library and museum, 44-516 to 44-528.

CHAPTER 2—COUNTY AND REGIONAL FREE LIBRARIES

Section 44-213. Participation of other governmental units.

44-213. Participation of other governmental units. When a joint county or regional library shall have been established, the legislative body of any government unit therein that is maintaining a library may decide, with the concurrence of the board of trustees of its library, to participate in the joint county or regional library; after which, beginning with the next fiscal year of the county, the governmental unit shall participate in the joint county or regional library and its residents shall be entitled to the benefits of the joint county or regional library, and property within its boundaries shall be subject to taxation for joint county or regional library purposes. A governmental unit participating in the joint county or regional library may retain title to its own property, continue its own board of library trustees, and may levy its own taxes for library purposes; or, by a majority vote of the qualified electors, a governmental unit may transfer, conditionally or otherwise, the ownership and control of its library, with all or any part of its property, to another governmental unit which is providing or will provide free library service in the territory of the former, and the trustees or body making the transfer shall thereafter be relieved of responsibility pertaining to the property transferred. The state board of education may contract with the government of any city or county, or the governments of both the city and the county, in which a unit of the university of Montana is located for the establishment and operation of joint library facilities. Any such contract which proposes the erection of a building shall be subject to the approval of the legislature. Any joint library facilities established pursuant to this section shall be operated and supported as provided in such contract and under this chapter.

History: En. Sec. 2, Ch. 132, L. 1939;
amd. Sec. 1, Ch. 249, L. 1963.

Effective Date

Section 2 of Ch. 249, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 11, 1963.

Amendment

The 1963 amendment added the third, fourth, and fifth sentences.

CHAPTER 4—STATE LAW LIBRARY

- Section 44-410. Accounts—approval.
44-412. Assistance in preparing index.

44-407. Repealed.

Repeal

This section (Sec. 7, Ch. 153, L. 1949),

relating to the state law library fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

44-410. Accounts—approval. All accounts for the proofing and printing of books, legal periodicals, library collections, furniture, fixtures and supplies must be prepared by the librarian, submitted to and approved by at least one (1) member of the board of trustees.

History: En. Sec. 10, Ch. 153, L. 1949; amd. Sec. 13, Ch. 97, L. 1961; amd. Sec. 85, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "and thereafter paid out of the state treasury from the library fund" at the end of the section.

44-412. Assistance in preparing index. The law librarian is authorized and empowered to engage and employ stenographic assistance in the preparation of such indexes.

History: En. Sec. 12, Ch. 153, L. 1949; amd. Sec. 86, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "and said assistant shall be paid out of the library fund" at the end of the section.

CHAPTER 5—HISTORICAL SOCIETY—LIBRARY AND MUSEUM

- Section 44-516. Historical society continued and perpetuated—purposes.
 44-517. Definition of terms.
 44-518. Library and museum independent of other state institutions.
 44-519. Board of trustees—appointment and terms of members.
 44-520. Qualifications of trustees.
 44-521. Executive committee of trustees.
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 44-523. Powers and duties of trustees.
 44-524. Director's responsibility—assistants and employees.
 44-525. Official seal of society.
 44-526. Furnishings and fittings in veterans' and pioneers' building.
 44-527. Fund raising drives—revenues and receipts.
 44-528. Fine arts' commission abolished.

44-501 to 44-515. Repealed.

Repeal

These sections (Secs. 1 to 15, Ch. 134, L. 1949; Secs. 14, 19, Ch. 97, L. 1961), relating to the historical society and the historical library and museum, were repealed by Sec. 14, Ch. 47, Laws 1963.

Sections 46 to 48, Ch. 147, Laws 1963, purported to amend sections 44-509, 44-510, and 44-514, respectively; however, under the rule of section 43-515, such amendments were void and did not revive the amended sections.

44-516. Historical society continued and perpetuated—purposes. The historical society of Montana, originally organized under the provisions of an act of the legislative assembly of the territory of Montana, entitled "an act to incorporate the historical society of Montana," approved February 2, 1865, and thereafter made to become the historical society of the state of Montana by an act approved March 4, 1891, entitled "an act concerning the historical society for the state of Montana and making an appropriation therefor," and by "an act to perpetuate the historical society of the state of Montana," approved March 1, 1949, is hereby continued and perpetuated as the "Montana Historical Society" and as such constitutes an agency of state government for the use, learning, culture and enjoyment of the citizens of the state and for the acquisition, preservation and protection of historical records, art archival and museum objects, historical places, sites and monuments and the custody, maintenance and

operation of the historical library, museums, art galleries, and historical places, sites and monuments.

History: En. Sec. 1, Ch. 47, L. 1963.

Title of Act

An act continuing and perpetuating the Montana historical society and prescribing the powers and duties of the board of trustees of the society; abolishing the Montana fine arts' commission; and repealing sections 44-501, 44-502, 44-503, 44-504, 44-505, 44-506, 44-507, 44-508, 44-509, 44-510, 44-511, 44-512, 44-513, 44-514, 44-515, 19-119, 19-120 and 19-121, R. C. M. 1947.

44-517. Definition of terms. As used in this act, (1) "Society" means the Montana historical society and includes

- (a) The historical and miscellaneous libraries and their contents;
- (b) Any museums and art galleries, and their contents, acquired by the trustees;
- (c) Any historical places, sites or monuments acquired or developed by the society;
- (d) Any divisions, departments and activities operated in conjunction with the historical library as are established by the trustees; and
- (e) Any books, papers, maps, charts, manuscripts, photographs, writings, records, objects of history and art, paintings, engravings, relics, collections or artifacts and minerals, furniture or fixtures acquired by the trustees.

(2) "Trustees" means the board of trustees of the Montana historical society.

(3) "Committee" means the executive committee of the board of trustees of the Montana historical society.

History: En. Sec. 2, Ch. 47, L. 1963.

44-518. Library and museum independent of other state institutions. Any historical library or museum administered by the society in accordance with the provisions of this act shall be independent of any other library, museum, or gallery owned, maintained or operated by the state of Montana.

History: En. Sec. 3, Ch. 47, L. 1963.

44-519. Board of trustees—appointment and terms of members. The government and administration of the society is vested in a board of fifteen (15) trustees, appointed by the governor, by and with the consent of the senate. Three (3) each of the original members of the board shall be appointed for one (1), two (2), three (3), four (4) and five (5) year terms. An appointment to replace a member whose term has expired shall be for five (5) years. An appointment to replace a member whose term has not expired shall be for the unexpired term.

History: En. Sec. 4, Ch. 47, L. 1963.

44-520. Qualifications of trustees. Trustees shall be appointed because of their special interest in the accomplishment of the purposes of the society, their fitness for discharging these duties, and their willingness to devote time and effort in the public interest and to serve without com-

pendent. The governor shall in so far as possible, appoint trustees from the various geographical areas of the state.

History: En. Sec. 5, Ch. 47, L. 1963.

44-521. Executive committee of trustees. The trustees may select an executive committee of five (5) trustees and delegate to the committee such functions in aid of the efficient administration of the affairs of the society as the trustees deem advisable.

History: En. Sec. 6, Ch. 47, L. 1963.

44-522. Reimbursement of trustees. The trustees shall serve without compensation, but may be reimbursed for mileage.

History: En. Sec. 7, Ch. 47, L. 1963.

44-523. Powers and duties of trustees. The powers and duties of the trustees are as follows:

(1) To elect annually from among their number a president, a vice-president, and a secretary.

(2) To adopt bylaws for their own government, and to make rules and regulations, not inconsistent with law, for the proper administration of the society in the interests of preserving the rich heritage of this state and its people.

(3) To appoint a director, fix his salary, and prescribe his duties and responsibilities.

(4) To create such classes of memberships in the society as they deem desirable, to determine the qualifications for any class of membership, and to set the fees to be paid for such memberships.

(5) To sell or exchange publications and surplus copies of books or other museum or art objects and use the money arising from such sales for the operation of the society and for the acquisition of historical materials and objects of art.

(6) To see that the collections and properties of the society are maintained in good order and repair.

(7) To report to the governor and the legislature biennially. The report shall include a statement of all important transactions and acquisitions, with suggestions and recommendations for the better realization of the purposes of the society and the improvement of its collections and services.

(8) To accept, receive and administer in the name of the society, any gifts, donations, properties, securities, bequests and legacies that may be made to the society. Moneys received by donation, gift, bequest or legacy, unless otherwise provided by the donor, shall be deposited in the state treasury and used for the general operation of the society.

(9) To collect, assemble, preserve and display where appropriate, all obtainable books, pamphlets, maps, charts, manuscripts, journals, diaries, papers, business records, paintings, drawings, engravings, photographs, statuary, models, relics, and all other materials illustrative of the history of Montana in particular, and generally of the Pacific Northwest, Northern Rocky Mountain and Northern Great Plains regions, and of the United States of America when pertinent; to procure from pioneers, early settlers

and others, narratives of the events relative to the early settlement of Montana, the Indian occupancy, Indian and other wars, overland travel and immigration to the territories of the west and all other related documents of Montana's history, development and society; to gather contemporary information, specimens, and all other materials which exhibit faithfully the distinctive historical and contemporary characteristics of the area with particular attention to Indian, military and pioneer artifacts and implements; to collect and preserve such natural history objects as fossils, plants, minerals and animals; to collect and preserve books, maps, manuscripts and other materials as will tend to facilitate historical, scientific, and antiquarian research; to promote the study of Montana history by lectures and publications; to generally foster and encourage the fine arts and cultural activities in Montana; to receive for and on behalf of the state by donation or otherwise, art objects of any kind and description and to exhibit and circulate such objects in Montana and elsewhere; and to microfilm papers or documents in danger of disappearance or injury.

History: En. Sec. 8, Ch. 47, L. 1963.

44-524. Director's responsibility—assistants and employees. The director is fully responsible for the immediate direction, management and control of the society, subject to the general programs and policies established by the trustees. The director may appoint and employ all assistants and employees required for the management of the historical society, subject to approval by the trustees.

History: En. Sec. 9, Ch. 47, L. 1963.

44-525. Official seal of society. The design of the official seal of the society shall be substantially as follows: A central group representing a covered immigrant wagon drawn by two yoke of oxen, showing prairie in the foreground, mountains in the background and directly beneath it the figures "1865." The seal shall be two inches in diameter and surrounded by the words, "Montana Historical Society Seal."

History: En. Sec. 10, Ch. 47, L. 1963.

44-526. Furnishings and fittings in veterans' and pioneers' building. The offices, library, museums and galleries, and quarters for the activities of the society in the veterans' and pioneers' memorial building shall be decorated, fitted, furnished and maintained in dignity and in harmony with the purposes of the society. All furniture and fittings for storage and the use of the library shall be, in design and function, adapted to the efficient and dignified operation and administration of the activities of the society.

History: En. Sec. 11, Ch. 47, L. 1963.

44-527. Fund raising drives—revenues and receipts. The society may engage in such fund raising drives and public contribution campaigns as will contribute to its continued development and support. It may produce, reproduce, sell, or exchange art objects, film, books, photographs, magazines, pamphlets, and museum objects which are appropriate and will bring

credit to the society and to Montana. It may also receive fees, commissions and royalties on the display and sale of arts and crafts. All profits, revenues, royalties or fees received in any such manner shall be deposited in the state treasury and may not be used for any purposes other than the improvement, development and operation of the society.

History: En. Sec. 12, Ch. 47, L. 1963.

Sale of Ancient Warrants

Chapter 134, Laws 1963, effective until June 30, 1965, provides for sale of certain old territorial and state warrants by the territorial centennial commission. The act reads: "An act to authorize and direct the state auditor to deliver certain warrants to the Montana territorial centennial commission.

"Section 1. The state auditor is hereby authorized and directed to deliver to the Montana territorial centennial commission all remaining territorial warrants and all state warrants dated prior to 1899 in

his possession. The commission shall sell these warrants in any manner they see fit, upon authorization by the state controller.

"Section 2. All money realized from the sale of these warrants shall be deposited with the state treasurer to the credit of the Montana territorial centennial commission and warrants issued upon authority of officers of the commission.

"Section 3. This act is effective from July 1, 1963, to June 30, 1965. On June 30, 1965, the existence of the commission shall cease, and all moneys of the commission shall be transferred to the state general fund."

44-528. Fine arts' commission abolished. The Montana fine arts' commission is abolished. All records, property and moneys of the Montana fine arts' commission are transferred to the society.

History: En. Sec. 13, Ch. 47, L. 1963.

Repealing Clause

Section 14 of Ch. 47, Laws 1963 read "Sections 44-501, 44-502, 44-503, 44-504,

44-505, 44-506, 44-507, 44-508, 44-509, 44-510, 44-511, 44-512, 44-513, 44-514, 44-515, 19-119, 19-120 and 19-121, R. C. M. 1947, are repealed."

TITLE 45—LIENS

- Chapter 1. Liens in general, definitions, creation and effect, 45-109, 45-112, 45-116.
3. Redemption from liens—extinction, 45-301, 45-308.
7. Crop liens for seed, grain and hail insurance, 45-704, 45-707.
8. Threshermen's liens, 45-809.
9. Farm laborers' liens, 45-911.
10. Laborers' and materialmen's liens on oil and gas wells and pipelines, 45-1003.
11. Miscellaneous liens, 45-1106, 45-1107.
13. Stoppage in transit, Repealed—Section 10-102, Chapter 264, Laws of 1963.
14. Crop or grain lien for dusting or spraying, 45-1410.

CHAPTER 1—LIENS IN GENERAL, DEFINITIONS, CREATION AND EFFECT

- Section 45-109. Lien on future interest.
45-112. Certain contracts void.
45-116. Holder of lien not entitled to compensation.

45-106. (8224) Repealed.

Repeal

This section (Sec. 3735, Civ. C. 1895), relating to mortgages and pledges, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

45-109. (8227) Lien on future interest. An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. Except as otherwise provided by the Uniform Commercial Code, in such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest. [Effective January 1, 1965.]

History: En. Sec. 3742, Civ. C. 1895;

re-en. Sec. 5712, Rev. C. 1907; re-en. Sec. 8227, R. C. M. 1921; amd. Sec. 11-118, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2883. Field Civ. C. Sec. 1589.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the second sentence.

45-112. (8230) Certain contracts void. Except as otherwise provided by the Uniform Commercial Code: all contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void. [Effective January 1, 1965.]

History: En. Sec. 3751, Civ. C. 1895;

re-en. Sec. 5715, Rev. C. 1907; re-en. Sec. 8230, R. C. M. 1921; amd. Sec. 11-119, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2889. Based on Field Civ. C. Sec. 1592.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

45-116. (8234) Holder of lien not entitled to compensation. Except as otherwise provided by the Uniform Commercial Code: One who holds property by virtue of a lien thereon is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting

it, except to the same extent as a borrower, under sections 47-109 and 47-110. [Effective January 1, 1965.]

History: En. Sec. 3755, Civ. C. 1895; re-en. Sec. 5719, Rev. C. 1907; re-en. Sec. 8234, R. C. M. 1921; amd. Sec. 11-120, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2892. Field Civ. C. Sec. 1596.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

CHAPTER 3—REDEMPTION FROM LIENS—EXTINCTION

Section 45-301. Right to redeem.

45-308. When restoration extinguishes lien.

45-301. (8238) Right to redeem. Except as otherwise provided by the Uniform Commercial Code, every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed. [Effective January 1, 1965.]

History: En. Sec. 3780, Civ. C. 1895; re-en. Sec. 5723, Rev. C. 1907; re-en. Sec. 8238, R. C. M. 1921; amd. Sec. 11-121, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2903.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

45-308. (8245) When restoration extinguishes lien. Except as otherwise provided by the Uniform Commercial Code: the voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property, or a lien thereon, in good faith, and for a good consideration. [Effective January 1, 1965.]

History: En. Sec. 3794, Civ. C. 1895; re-en. Sec. 5730, Rev. C. 1907; re-en. Sec. 8245, R. C. M. 1921; amd. Sec. 11-122, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2913. Based on Field Civ. C. Sec. 1607.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

CHAPTER 7—CROP LIENS FOR SEED, GRAIN AND HAIL INSURANCE

Section 45-704. Acknowledgment of satisfaction of lien.

45-707. Satisfaction of lien.

45-704. (8362) Acknowledgment of satisfaction of lien. Whenever the indebtedness which is a lien upon such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of the action. [Effective January 1, 1965.]

History: En. Sec. 4, Ch. 15, Ex. L. 1918; re-en. Sec. 8362, R. C. M. 1921; amd. Sec. 11-123, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a chattel mortgage" after "ac-

knowledge satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to

do so by a person having a property interest in such grain or other crops" in the latter part of the section.

45-707. (8365) Satisfaction of lien. Whenever the indebtedness, which is a lien upon such grain or other crops, is paid or satisfied on or before November 1 of the then current year, it is the duty of the lienor to acknowledge satisfaction thereof within twenty days after receiving payment, and to discharge the said lien of record, and if any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid he is liable to any person injured thereby in the amount of such injury and the costs of action. If any hail lien is not satisfied on or before the first day of March of the next succeeding year after the insurance was carried on the crop, the same shall be deemed satisfied and released of record. [Effective January 1, 1965.]

History: En. Sec. 3, Ch. 223, L. 1921; re-en. Sec. 8365, R. C. M. 1921; amd. Sec. 11-124, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a chattel mortgage" after "acknowledge satisfaction thereof" in the first part of the first sentence.

CHAPTER 8—THRESHERMEN'S LIENS

Section 45-809. Acknowledgment of satisfaction of lien—penalty.

45-809. (8374) Acknowledgment of satisfaction of lien—penalty. Whenever the indebtedness which is a lien upon any such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of action. [Effective January 1, 1965.]

History: En. Sec. 9, Ch. 25, L. 1915; re-en. Sec. 8374, R. C. M. 1921; amd. Sec. 11-125, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a mortgage" after "acknowledgment of satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops" in the latter part of the section.

edge satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops" in the latter part of the section.

CHAPTER 9—FARM LABORERS' LIENS

Section 45-911. Acknowledgment of satisfaction of lien—penalty.

45-911. (8374.11) Acknowledgment of satisfaction of lien—penalty. Whenever the indebtedness which is a lien upon any of such crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record, and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such crops, he is liable to any person injured thereby in the amount of such injury and costs of action. [Effective January 1, 1965.]

History: En. Sec. 11, Ch. 196, L. 1935; amd. Sec. 11-126, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a chattel mortgage" after "acknowledged satisfaction thereof" in the first

part of the section; inserted "within thirty (30) days after being requested to do so by a person having a property interest in such crops" in the latter part of the section; and made a minor change in punctuation.

CHAPTER 10—LABORERS' AND MATERIALMEN'S LIENS ON OIL AND GAS WELLS AND PIPELINES

Section 45-1003. Manner of enforcing liens—[†]duty of county clerks.

45-1003. (8377) Manner of enforcing liens—duty of county clerks.

The liens herein created shall arise, be perfected, have the same priority and be enforced in the same manner and the duty of county clerks with respect to the filing and abstracting of liens shall be the same as now provided by the laws of Montana for materialmen's and mechanic's liens, with the following exceptions:

(1) The statement of lien shall be filed with the county clerk of the county in which any part of such land, leasehold, or pipeline is situated.

(2) Such statement must be filed within six (6) months after the date upon which said material or services were last furnished or labor last performed under the contract.

History: En. Sec. 3, Ch. 45, L. 1917; re-en. Sec. 8377, R. C. M. 1921; amd. Sec. 2, Ch. 152, L. 1923; amd. Sec. 3, Ch. 143, L. 1957; amd. Sec. 1, Ch. 193, L. 1963.

and added, at the end of the section, the words "with the following exceptions" and the numbered paragraphs.

Amendment

The 1963 amendment inserted the words "arise, be perfected, have the same priority and" near the beginning of the section;

Repealing Clause

Section 2 of Ch. 193, Laws 1963 read "Sections 45-1004, 45-1005 and 45-1006, R. C. M. 1947, are hereby repealed."

45-1004 to 45-1006. Repealed.

Repeal

These sections (Secs. 4 to 6, Ch. 143, L. 1957), relating to the perfection and pri-

ority of oil and gas well and pipeline liens, were repealed by Sec. 2, Ch. 193, Laws 1963.

CHAPTER 11—MISCELLANEOUS LIENS

Section 45-1106. Agisters' liens and liens for service—priority.

45-1107. Secured party may take possession of property.

45-1104. (8381) Repealed.

Repeal

Relating this section (Sec. 3933, Civ. C. 1895), relating to liens of sellers of personal

property, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

45-1106. (8383) Agisters' liens and liens for service—priority. Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant thereof by labor or skill employed for the making, repairing, protection, improvement, safe-keeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner or lawful claimant for such service and for material, if any, furnished in connection therewith. A ranchman, farmer, agister, herder, hotel-keeper, livery, boarding, or feed stable-keeper, to whom any horses, mules, cattle,

sheep, hogs, or other stock are entrusted, and there is a contract, express or implied, for their keeping, feeding, herding, pasturing, or ranching, has a lien upon such stock for the amount due for keeping, feeding, herding, pasturing, or ranching the same, and is authorized to retain possession thereof until the sum due is paid. The lien hereby created shall not take precedence over perfected security interests under the Uniform Commercial Code—Secured Transactions, or other recorded liens on the property involved, unless within ten days from the time of receiving the property, the person desiring to assert a lien thereon shall give notice in writing to said secured party or other lien holder, stating his intention to assert a lien on said property, under the terms of this act, and stating the nature and approximate amount of the work, or feed, performed or furnished or intended to be performed or furnished therefor.

Such service may be made either by personal service or by mailing by registered mail a copy of said notice to the secured party or other lien holder at his last known post-office address. Said service shall be deemed complete upon the deposit of the notice in the post office. [Effective January 1, 1965.]

History: Similar early acts were Sec. 1, p. 331, Bannack Stat.; re-en. Sec. 29, p. 514, Cod. Stat. 1871; re-en. Sec. 848, 5th Div. Rev. Stat. 1879; re-en. Sec. 1394, 5th Div. Comp. Stat. 1887; amd. Sec. 3935, Civ. C. 1895.

En. Sec. 3935, Civ. C. 1895; re-en. Sec. 5805, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1921; re-en. Sec. 8383, R. C. M. 1921; amd. Sec. 11-127, Ch. 264, L. 1963. Cal. Civ. C. Sec. 3051. First paragraph based on Field Civ. C. Sec. 1696.

Amendment

The 1963 amendment substituted "perfected security interests under the Uniform Commercial Code—Secured Transactions" in the first part of the third sentence in the first paragraph for "the lien of prior chattel mortgages"; and substituted "secured party" for "mortgagee" in the third sentence in the first paragraph and in the first sentence in the second paragraph.

45-1107. (8384) Secured party may take possession of property. Within ten days after the date of such mailing, or five days after such personal service, the secured party or other lien holder, or his representative, shall have the right to take possession of said property upon payment of the amount of the lien then accrued. A failure on the part of such secured party or other lien holder so to do shall constitute a waiver of the priority of such security interest or other lien over the lien created by this act. [Effective January 1, 1965.]

History: En. Sec. 2, Ch. 117, L. 1921; re-en. Sec. 8384, R. C. M. 1921; amd. Sec. 11-128, Ch. 264, L. 1963. Cal. Civ. C. Sec. 3052.

cured party" for "mortgagee" in two places; substituted "security interest" for "chattel mortgage" in the second sentence; and added "over the lien created by this act" at the end of the section.

Amendment

The 1963 amendment substituted "se-

CHAPTER 13—STOPPAGE IN TRANSIT

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

45-1301 to 45-1305. (8396 to 8400) Repealed.

Repeal

These sections (Secs. 3970 to 3974, Civ. C. 1895; Secs. 5837 to 5841, Rev. C. 1907; Secs. 8396 to 8400, R. C. M. 1921), relating

to stoppage in transit, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

CHAPTER 14—CROP OR GRAIN LIEN FOR DUSTING OR SPRAYING

Section 45-1410. Acknowledgment of satisfaction and discharge of lien—penalty for failure.

45-1410. Acknowledgment of satisfaction and discharge of lien—penalty for failure. Whenever the indebtedness which is a lien upon any such grain or crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such grain or crops, he is liable to any person injured thereby in the amount of such injury and the costs of action. [Effective January 1, 1965.]

History: En. Sec. 10, Ch. 205, L. 1953;
amd. Sec. 11-129, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a mortgage" after "acknowledge

satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to do so by a person having a property interest in such grain or crops" in the latter part of the section.

TITLE 46—LIVESTOCK

- Chapter 1. Livestock industry—regulation by livestock commission, 46-105.
6. Brands—recording—venting—livestock mortgages, 46-609.
 7. Inspectors and detectives, 46-704, 46-707.
 8. Inspection of livestock before removal from county, 46-803, 46-804, 46-806, 46-809 to 46-813.
 9. Livestock markets—inspection and quarantine—license and bonding, 46-904, 46-911.
 10. Estrays—disposal of, 46-1005, 46-1006.
 14. Legal fences—liability of owners for trespassing stock, 46-1411, 46-1413.
 19. Bounties for killing wild animals—killing dogs injuring livestock, 46-1901, 46-1903, 46-1904, 46-1912, 46-1914, 46-1915.
 23. Grass conservation—grazing districts, 46-2306, 46-2331.
 28. Cattle protective districts, 46-2801 to 46-2805.

CHAPTER 1—LIVESTOCK INDUSTRY—REGULATION BY LIVESTOCK COMMISSION

Section 46-105. Audit of bills—payment of expenses.

46-104. (3256) Duties and powers of commission.

Livestock Markets

In the regulation of livestock markets under section 46-907 the livestock commission has the power to determine whether or not a showing of convenience

and necessity has been made. Application of Baker Sales Barn, Inc., — M —, 367 P 2d 775, 780, 781. (Dissenting opinions — M —, 367 P 2d 783, 784.)

46-105. (3257) Audit of bills—payment of expenses. It shall be the duty of the livestock commission to audit all bills for expenses incurred by it in the discharge of its duties, which shall be paid out of the livestock commission moneys in the earmarked revenue fund.

History: En. Sec. 5, Ch. 51, L. 1917; re-en. Sec. 3257, R. C. M. 1921; amd. Sec. 88, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "which shall be paid out of the livestock commission moneys in the earmarked revenue fund" at the end of the section for "and when found correct, to certify the same to the state auditor, who shall thereupon draw a warrant upon the state treasurer in favor of the party or parties en-

titled thereto for the amount so certified, which warrants shall be drawn upon and paid out of the livestock commission fund, which said fund shall be created by placing to its credit the amounts heretofore directed to be placed to the credit of the sheep inspection and indemnity fund and the stock inspection and detective fund by section 84-5212, and other funds hereafter appropriated for the support and maintenance of the said commission."

CHAPTER 2—LIVESTOCK SANITARY BOARD AND STATE VETERINARY SURGEON—QUARANTINE—INSPECTION AND DESTRUCTION OF DISEASED STOCK—LICENSING DAIRIES, MILK PLANTS AND SLAUGHTERHOUSES

46-241. (3291) Repealed.

Repeal

This section (Sec. 32, Ch. 262, L. 1921), relating to the livestock sanitary board

account, was repealed by Sec. 242, Ch. 147, Laws 1963.

CHAPTER 6—BRANDS—RECORDING—VENTING— LIVESTOCK MORTGAGES

Section 46-609. Fees for recorder of marks and brands.

46-609. (3307) Fees for recorder of marks and brands. The general recorder of marks and brands shall charge and collect for recording each mark or brand the sum of eight dollars (\$8.00), and for re-recording each mark or brand the sum of four dollars (\$4.00), and for a certified copy of any such record and each duplicate certificate one dollar (\$1.00), and all fees so collected shall be paid into the earmarked revenue fund for the use of the livestock commission; providing, however, that not more than ten per cent (10%) of the net re-recording fees after all expenses of re-recording are paid, shall be expended in any one year except in case of an emergency declared by the governor.

History: En. Sec. 7, Ch. 144, L. 1921; re-en. Sec. 3307, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1929; amd. Sec. 1, Ch. 109, L. 1949; amd. Sec. 1, Ch. 65, L. 1959; amd. Sec. 90, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund for the use of the livestock commission" for "the livestock commission fund."

CHAPTER 7—INSPECTORS' AND DETECTIVES

Section 46-704. Compensation.

46-707. Compensation for animals killed.

46-704. (3312) Compensation. The stock inspectors and detectives are under the exclusive control and direction of the commission, and must be paid for their services such sums as may be agreed upon by the commission, but in no case must they receive any mileage.

History: En. Sec. 2973, Pol. C. 1895; re-en. Sec. 1799, Rev. C. 1907; re-en. Sec. 3312, R. C. M. 1921; amd. Sec. 91, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "commission" for "board" in two places.

46-707. (3315) Compensation for animals killed. The value of the animal so taken and killed shall be determined by three disinterested parties living in the vicinity where the animal is seized, and the tender of the valuation so made to the owner shall be full compensation on account of the loss of said animal. All sums of money disbursed as herein provided shall be paid out of the livestock commission moneys in the earmarked revenue fund, and whenever possible the dead bodies of the animals killed shall be disposed of for cash, and the proceeds turned into said fund.

History: En. Sec. 2975, Pol. C. 1895; re-en. Sec. 1802, Rev. C. 1907; re-en. Sec. 3315, R. C. M. 1921; amd. Sec. 92, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "livestock commission moneys in the earmarked revenue fund" in the second sentence for "livestock commission fund."

CHAPTER 8—INSPECTION OF LIVESTOCK BEFORE REMOVAL FROM COUNTY

Section 46-803. Seizure of livestock, retention of livestock, sale, disposal of proceeds.
46-804. Fees for inspection and livestock transportation permit.
46-806. Penalties for violation of act.
46-809. Order requiring sheep removal permits—petition by sheep raisers.

- 46-810. Permit required for removal of sheep after order—violation as misdemeanor.
- 46-811. Form and issuance of permits—fee.
- 46-812. Publication of notice of sheep removal permit order.
- 46-813. Removal of permit requirement.

46-803. Seizure of livestock, retention of livestock, sale, disposal of proceeds. All state stock inspectors inspecting any livestock, either before or after shipment or removal from any county in this state, shall, in addition to the powers granted them by law, possess the further authority to inspect and seize either at the point of shipment or destination or en route any livestock, or proceeds thereof, which said inspector may have good reason to believe is stolen, or upon which brands have been altered or obliterated, or which does not conform to the description contained on the tally sheet furnished by the shipper thereof or to the description contained in any certificate of inspection issued before shipment or removal of such livestock.

Upon taking possession of any such livestock in the exercise of the authority granted by this act, the state stock inspector may retain same in his possession for not to exceed fifteen (15) days for the purpose of making further investigation relative to its ownership, or may either at once or at any time within said period of fifteen (15) days sell said livestock at any licensed livestock market, or in the open market, for the best available price and remit the proceeds, less the cost of keeping and sale, to the livestock commission together with a full description of the animal sold, giving marks and brand, if any, and a statement of the reason for the seizure and sale thereof. Said proceeds shall be deposited by the livestock commission with the state treasurer and credited to the agency fund, where it shall be subject to claim by the owner of the livestock in the same manner and for the same length of time as is provided by law for the making of claims for moneys arising from the sale of stray stock.

History. En. Sec. 3, Ch. 59, L. 1943; amd. Sec. 108, Ch. 147, L. 1963.

"agency fund" for "stock estray fund" in the last sentence of the second paragraph; and substituted "for moneys arising from the sale of stray stock" for "against said fund" at the end of the section.

Amendment

The 1963 amendment substituted

46-804. Fees for inspection and livestock transportation permit. (a) For the service of inspection herein provided for before removal from county, the inspector making such inspections shall receive twenty-five cents (25¢) per head for twelve (12) head or less, or three dollars (\$3.00) for from twelve (12) head to thirty (30) head and shall receive ten cents (10¢) per head for each animal over thirty (30) head; for the issuance of a market consignment permit or transportation permit herein provided for before removal from county, the inspector, sheriff or deputy sheriff issuing such permits shall receive twenty-five cents (25¢) for each permit issued for twelve (12) head or less; fifty cents (50¢) for each permit for twelve (12) to thirty (30) head and one dollar (\$1.00) for each permit issued for over thirty (30) head and shall receive in addition thereto his necessary actual expenses, to be paid by the owner thereof or the person for whom the inspection is made or permit issued. All such inspection and

permit fees and expenses shall be collected by the inspector, sheriff or deputy sheriff making the same at the time of inspection or issuance of permit and all such fees and expenses collected by a deputy state stock inspector, sheriff or deputy sheriff shall be retained by him and all such fees and expenses collected by a state stock inspector shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the livestock commission.

(b) For the service of inspection herein provided for before any such animal is sold or offered for sale at any licensed public market, the state stock inspector making such inspection shall receive (1) twenty cents (20¢) per head for any such animal originating within the county in the state in which such market is maintained, or transported under a market consignment permit, and (2) ten cents (10¢) per head for any such animal previously inspected before removal from county as herein provided. All such fees to be paid by the owner thereof or by the person for whom the inspection is made. For inspecting any such animal before same is removed from the premises of such licensed public market the state stock inspector making such inspection shall receive ten cents (10¢) per head from the owner thereof or the person for whom the inspection is made. All such fees for inspection at such market shall be collected by the state stock inspector making the inspection at the time such inspection is made and shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the livestock commission.

(c) A question or doubt having arisen as to the intention of the legislature and policy of the state concerning the disposition of inspection fees and expenses collected by the state stock inspectors of the state of Montana for the inspection of livestock, it is hereby declared to be the policy of this state and the intent of the said twenty-eighth legislative assembly of the state of Montana that all such inspection fees and expenses be paid to the livestock commission for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the livestock commission, and that said state stock inspectors shall be paid for their services and receive for their expenses only such sums as shall be agreed upon by the livestock commission of the state of Montana and fixed and determined by the state board of examiners.

History: En. Sec. 4, Ch. 59, L. 1943; amd. Sec. 1, Ch. 106, L. 1949; amd. Sec. 3, Ch. 184, L. 1953; amd. Sec. 3, Ch. 142, L. 1957; amd. Sec. 93, Ch. 147, L. 1963.

Amendment

The 1963 amendment, in subds. (a), (b) and (c), substituted "the earmarked revenue fund for the use of the livestock commission" for "the livestock commission fund."

46-806. Penalties for violations of act. (a) to (e). * * * [Same as parent volume.] ✓ *See PV*

(f) Upon conviction of any person, firm, association, or corporation under this act, they shall be fined in a sum of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or imprisoned in the county jail for a period of not more than six (6) months, or shall be punished by both such fine and imprisonment. Of all fines assessed and

collected under the provisions of this act, fifty per cent (50%) thereof shall be paid into the state treasury and credited to the earmarked revenue fund for the use of the livestock commission, and fifty per cent (50%) thereof shall be paid into the general fund of the county in which the conviction occurred.

History: En. Sec. 6, Ch. 59, L. 1943; amd. Sec. 4, Ch. 184, L. 1953; amd. Sec. 4, Ch. 142, L. 1957; amd. Sec. 94, Ch. 147, L. 1963.

Amendment

The 1963 amendment, in subd. (f), substituted "the earmarked revenue fund for the use of the livestock commission" for "the livestock commission fund."

46-809. Order requiring sheep removal permits—petition by sheep raisers. The livestock commission shall, within sixty (60) days of the filing of a petition signed by not less than fifty-one per cent (51%) of the sheep raisers owning not less than fifty-one per cent (51%) of the sheep in any county of the state requesting such action, make an order requiring a permit for the removal of any sheep from such county.

History: En. Sec. 1, Ch. 135, L. 1963.

Title of Act

An act to authorize the Montana livestock commission, upon petition of fifty-one per cent (51%) of the sheep raisers owning fifty-one per cent (51%) of the sheep in any county of the state, to re-

quire a permit for the removal of sheep from such county; providing for the form and issuance of such permits; providing that it shall be a misdemeanor to remove sheep from such a county without a permit; and providing for the manner of removing the requirement for such a permit.

46-810. Permit required for removal of sheep after order—violation as misdemeanor. From and after the date of any order of the livestock commission requiring a permit for the removal of sheep from any county, it shall be unlawful for any person to remove sheep from such county without a permit, and any person removing, authorizing or assisting in the removal of sheep from such county without a permit shall be guilty of a misdemeanor.

History: En. Sec. 2, Ch. 135, L. 1963.

46-811. Form and issuance of permits—fee. Before making any order under this act, the livestock commission must provide for the form of the permit and for issuance of such permits by livestock inspectors in the affected county. Fee for issuance of such permit shall be fifty cents (50¢).

History: En. Sec. 3, Ch. 135, L. 1963.

46-812. Publication of notice of sheep removal permit order. Before the effective date of any order made under this act, the commission must publish a notice containing the text and effective date of the order at least three (3) times in a paper of general circulation in the county and must cause a copy of the order to be mailed to every sheep raiser in the county.

History: En. Sec. 4, Ch. 135, L. 1963.

46-813. Removal of permit requirement. Upon receipt of a petition signed in the same manner as that specified in section 1 [46-809] of this act, requesting the removal of the permit requirement, the livestock commission shall, at its next meeting, make an order removing the permit requirement.

History: En. Sec. 5, Ch. 135, L. 1963.

CHAPTER 9—LIVESTOCK MARKETS—INSPECTION AND QUARANTINE —LICENSE AND BONDING

Section 46-904. State treasurer to hold proceeds of sales of stray stock.
46-911. License fee.

46-901. (3328) Public markets—record books of sales of livestock.

References

Application of Baker Sales Barn, Inc.,
— M —, 367 P 2d 775, 778.

46-904. (3331) State treasurer to hold proceeds of sales of stray stock.
When the provisions of this law shall have been fully complied with, and the money paid into the state treasury, two years after its receipt from the state livestock commission, the state treasurer shall be required to hold such money in the agency fund and his books shall show all information with respect to the sale and proceeds from each animal, in accordance with the published yearly report of the livestock commission, and such money shall be held by the state treasurer for the use and benefit of the rightful owner and claimant of such money for the period of one year, after which it shall become state property and be placed to the credit of the earmarked revenue fund for the use of the livestock commission.

History: En. Sec. 4, Ch. 96, L. 1907;
Sec. 1818, Rev. C. 1907; re-en. Sec. 3331,
R. C. M. 1921; amd. Sec. 106, Ch. 147, L.
1963.

Amendment

The 1963 amendment substituted "the

agency fund" for "a separate fund, to be known and designated as the 'stray stock fund'"; and substituted "earmarked revenue fund for the use of the livestock commission" for "livestock commission fund" at the end of the section.

46-907. Regulation of livestock markets.

Powers of Livestock Commission

The discretionary power of the livestock commission to determine whether or not a showing of convenience and necessity has been made by applicant for

certificate to operate a livestock market is limited by section 46-909. Application of Baker Sales Barn, Inc., — M —, 367 P 2d 775, 780. (Dissenting opinions — M —, 367 P 2d 783, 784.)

46-908. Certificate to operate livestock market required, etc.

Governmental Licensing

Livestock markets are proper subjects for governmental licensing on the basis of convenience and necessity. Application of

Baker Sales Barn, Inc., — M —, 367 P 2d 775, 779. (Dissenting opinions — M —, 367 P 2d 783, 784.)

46-909. Hearing and procedure—limitation upon issuance of certificates.

Discretionary Power of Commission

This section limits the discretionary power of the livestock commission to determine whether or not a showing of convenience and necessity has been made by applicant for certificate to operate a livestock market. Application of Baker Sales Barn, Inc., — M —, 367 P 2d 775, 780. (Dissenting opinions — M —, 367 P 2d 783, 784.)

outside of Montana but it has effect only so far as the effects on existing markets in the state are concerned. Application of Baker Sales Barn, Inc., — M —, 367 P 2d 775, 782. (Dissenting opinions — M —, 367 P 2d 783, 784.)

Refusal of certificate of public convenience and necessity for operation of a livestock market was justified where evidence of the applicants showed only convenience as to distances, desirability for community and a border-line market economically. Application of Baker Sales Barn, Inc., — M —, 367 P 2d 775, 781. (Dissenting opinions — M —, 367 P 2d 783, 784.)

Sufficiency of Evidence

In a proceeding to obtain a certificate of public convenience and necessity for operation of a livestock market, evidence may be introduced pertaining to markets

46-911. License fee. Every person operating a livestock market in this state shall be required to pay on May 1st, annually, a license fee of one hundred dollars (\$100.00) to the livestock commission. All fees provided for under this act shall be paid into the state treasury, and shall be placed by the state treasurer to the credit of the earmarked revenue fund for the use of the livestock commission.

History: En. Sec. 6, Ch. 193, L. 1945; amd. Sec. 95, Ch. 147, L. 1963.

earmarked revenue fund for use of the livestock commission" for "the livestock commission fund" at the end of the section.

Amendment

The 1963 amendment substituted "the

46-917. Appeal by licensee or applicant for certificate, etc.

Review by District Court

On review provided in the district court under this section it is the duty of the court to examine the records made before the livestock commission to determine whether the commission acted "capri-

ciously, arbitrarily, or abused its discretion and whether it acted according to law." Application of Baker Sales Barn, Inc., — M —, 367 P 2d 775, 780. (Dis-senting opinions — M —, 367 P 2d 783, 784.)

CHAPTER 10—ESTRAYS—DISPOSAL OF

Section 46-1005. "Estray," as herein used, defined.

46-1006. Publication of description of estrays sold—disposition of proceeds remaining in state treasury.

46-1005. (3337) "Estray," as herein used, defined. An estray within the meaning of this act shall be any horse, mule, mare, gelding, colt, cow, ox, bull, stag, steer, heifer, calf, sheep, or lamb, not bearing a brand and the ownership of which cannot be determined by the stock inspector of the district wherein such animal may be found, by inquiry among reputable resident stock owners or freeholders therein; or any of such animals bearing a recorded brand but the owner of which brand cannot be located at or through the post office designated upon the records of the recorder of marks and brands, or which owner cannot be located by the stock inspector of the district where such estray is found by inquiry among reputable resident stock owners or freeholders therein; or any of the animals above enumerated which bears an unrecorded brand, the owner of which unrecorded brand cannot be ascertained by the stock inspector of the district wherein said animal is found, by inquiry among reputable resident stock owners or freeholders therein.

History: En. Sec. 5, Ch. 34, L. 1915; re-en. Sec. 3337, R. C. M. 1921; amd. Sec. 1, Ch. 112, L. 1959; amd. Sec. 1, Ch. 37, L. 1963.

Repealing Clause

Section 2 of Ch. 37, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1963 amendment extended the section to include sheep and lambs.

46-1006. (3338) Publication of description of estrays sold—disposition of proceeds remaining in state treasury. A full description of estrays for which the proceeds derived from the sale remains in the hands of the treasurer unclaimed shall be published for the period of two (2) consecutive weekly or semimonthly or monthly issues next after May first

of each year in not more than four (4) weekly or semimonthly or monthly publications in the state of Montana, said publications to be designated by the state livestock commission, and when such publication shall have been made and the proceeds from the sale of such animals shall have remained in the hands of the state treasurer for a period of two (2) years, it shall be, by the treasurer, upon request of the state livestock commission, at once placed to the credit of the earmarked revenue fund for the use of the livestock commission.

History: En. Sec. 5, Ch. 2, L. 1911; amd. Sec. 1, Ch. 20, L. 1919; re-en. Sec. 3338, R. C. M. 1921; amd. Sec. 1, Ch. 63, L. 1927; amd. Sec. 1, Ch. 95, L. 1941; amd. Sec. 107, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "earmarked revenue fund for the use of the livestock commission" for "state livestock commission fund" at the end of the section.

CHAPTER 14—LEGAL FENCES—LIABILITY OF OWNERS FOR TRESPASSING STOCK

Section 46-1411. Marking land and mining claims in national forest.

46-1413. Marking—right of action against trespassing stock.

46-1411. (3380) Marking land and mining claims in national forest.

It shall be the duty of the owner, or the person holding possessory right, to all unfenced lands, or patented or unpatented mining claims, which said lands or patented or unpatented mining claims lie within the boundary of national forest reserves in the state of Montana, or lying on public ranges adjoining to any national forest reserve, to mark the boundaries thereof by substantial monuments that can be readily seen and observed so that such boundaries can be readily traced.

History: En. Sec. 1, Ch. 222, L. 1921; re-en. Sec. 3380, R. C. M. 1921; amd. Sec. 1, Ch. 31, L. 1963.

Amendment

The 1963 amendment inserted "or unpatented" before "mining claims" in two places.

46-1413. (3382) Marking—right of action against trespassing stock.

No person owning or possessing agricultural or grazing land, or patented or unpatented mining claims lying within said national forest reserves of this state or on the public range lying adjoining to any said national forest reserve, the boundaries of which said lands are not marked as required by the provisions of this act, shall have any claim or cause of action or right of action against the owner of sheep, cattle or other livestock under the charge of a herder, for trespass committed by such livestock upon said land, and such shall be the rule regardless of whether the said livestock so trespassing strayed thereon on their own inclination and without being driven, or whether said livestock were herded or driven on said land; provided, that no person or persons can claim exemption for trespassing under the provisions of this section where such person or persons shall have actual knowledge of the boundary lines of any lands herein referred to; but in no event shall damages other than nominal damages be assessed against said trespass, unless the landowner or his duly authorized agent shall within six months after said

trespass has been committed, give said trespasser written notice demanding a sum certain for damages sustained by reason of such trespass.

History: En. Sec. 3, Ch. 222, L. 1921; re-en. Sec. 3382, R. C. M. 1921; amd. Sec. 1, Ch. 78, L. 1927; amd. Sec. 2, Ch. 31, L. 1963.

Repealing Clause

Section 3 of Ch. 31, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 31, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 2, 1963.

Amendment

The 1963 amendment inserted "or unpatented" before "mining claims" near the beginning of the section; and substituted "livestock" for "sheep" before "so trespassing" and before "were herded or driven."

CHAPTER 19—BOUNTIES FOR KILLING WILD ANIMALS— KILLING DOGS INJURING LIVESTOCK

- Section 46-1901. Five per cent of county license money to be used for payment of bounty claims.
- 46-1903. Livestock commission to supervise destruction of predatory animals—co-operation with other agencies—advisory committee—administration of moneys.
- 46-1904. Disposal of proceeds from sale of skins, hides and specimens—presenting to museums.
- 46-1912. Use of funds remaining after payment of bounties—sale of furs, skins and specimens—presentation to museums.
- 46-1914. Levy of tax for purpose of paying for destruction of wild animals—limitation on levy.
- 46-1915. Penalty for fraudulent claims.

46-1901. (3414) Five per cent of county license money to be used for payment of bounty claims. For the purpose of providing for the payment of bounty claims five per cent of all license money collected by the several county treasurers of the state shall be paid over by said county treasurers to the state treasurer and shall by the latter be deposited in the earmarked revenue fund.

History: En. Sec. 3075, Pol. C. 1895; re-en. Sec. 1909, Rev. C. 1907; amd. Sec. 1, Ch. 13, L. 1921; re-en. Sec. 3414, R. C. M. 1921; amd. Sec. 97, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "there is

hereby created a fund to be known as the state bounty fund which shall consist of" before "five per cent"; deleted "and said moneys" before "shall be paid over"; and substituted "the earmarked revenue fund" at the end of the section for "the state bounty fund."

46-1903. (3417.2) Livestock commission to supervise destruction of predatory animals—co-operation with other agencies—advisory committee—administration of moneys. (a) and (b). * * * [Same as parent volume.]

(c) Subject to the constitutional authority of the state board of examiners, the Montana livestock commission shall administer and expend for predatory animal extermination and control, in production of livestock and poultry in the state of Montana all the moneys that are or may be made available to it, including the moneys from the levy under section 9 of article XII of the Constitution of Montana and section 84-5214, enacted pursuant to such provision of the constitution, and all such moneys as are made available to said commission by appropriations made by the legislative assembly for predatory animal control by said commission. The

commission shall expend said funds for predatory animal control by all effective means, including employment of hunters, trappers and other personnel, procurement of traps, poisons, equipment and supplies, and, also, for the payment of bounties within the sound discretion of the commission, as advised by the advisory agencies aforesaid, and responsive to the necessities of control in various areas of the state. The commission shall not consider or approve any claims against funds available to it, in excess of the amounts available in any biennium, and no warrants shall be issued or registered for any such claims whether for bounties or for any other purposes.

(d). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 73, L. 1923; amd. Sec. 1, Ch. 113, L. 1947; amd. Sec. 98, Ch. 147, L. 1963.

Amendment

The 1963 amendment in the first sentence of subsection (c) deleted "shall have, and it is hereby invested with control and supervision of the state bounty fund,

and it" which followed "Montana livestock commission" and deleted the words "in said fund" which followed the words "moneys that are or may be made available to it"; and in the last sentence of subsection (c) deleted the words "said state bounty fund, or against additional" which followed the words "claims against."

46-1904. (3417.3) Disposal of proceeds from sale of skins, hides and specimens—presenting to museums. All furs, skins and specimens, taken by hunters or trappers, shall be sold by the livestock commission, and the proceeds from such sales shall be credited to the earmarked revenue fund, the same to be used in the further carrying out of the provisions of this act, provided that any specimens so taken may be presented, free of charges to any state museum or institution.

History: En. Sec. 3, Ch. 73, L. 1923; amd. Sec. 99, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "whose

salaries may be paid in whole or in part out of the fund herein created" which followed "hunters or trappers"; and substituted "earmarked revenue fund" for "bounty fund."

46-1912. (3417.11) Use of funds remaining after payment of bounties—sale of furs, skins and specimens—presentation to museums. If, at the end of any bounty paying season, there shall be a surplus of moneys available for the administration of Chapter 19, Title 46, R.C.M. 1947, such surplus may be used to hire salaried hunters and trappers to hunt and trap predatory animals and to purchase and supply poison to be used for a poison campaign on predatory animals.

All furs, skins and specimens, taken by hunters or trappers, whose salaries may be paid in whole or in part out of such moneys, shall be sold by the livestock commission, and the proceeds from such sales shall be credited to the earmarked revenue fund, the same to be used in the further carrying out of the provisions of this act, provided that any specimens so taken may be presented, free of charge to any state museum or institution.

History: En. Sec. 8, Ch. 109, L. 1925; amd. Sec. 100, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "of moneys available for the administration of

Chapter 19, Title 46, R.C.M. 1947" for "in the state bounty fund" in the first paragraph; and in the second paragraph substituted "such moneys" for "the fund herein created" and "earmarked revenue fund" for "bounty fund."

46-1914. (3417.13) Levy of tax for purpose of paying for destruction of wild animals—limitation on levy. The department of state whose duty it is to fix tax levies, shall annually prescribe the levy recommended by the livestock commission to be made against livestock of all classes, for the purpose of paying for the destruction of wild animals killed within the state, which tax in any one year shall not exceed one and one-half ($1\frac{1}{2}$) mills on a dollar upon the assessed valuation of such livestock, and such moneys so received shall be used and applied only to the payment of claims for the destruction of wild animals and to the administration of the provisions of this act, approved by the livestock commission, and the moneys received for the taxes so levied shall be transmitted annually with other taxes for state purposes to the state treasurer by the county treasurer of each county, and when received by the state treasurer shall be placed to the credit of the earmarked revenue fund, and such moneys shall thereafter be paid out on claims approved as aforesaid, in accordance with the law governing the payment of claims.

History: En. Sec. 10, Ch. 109, L. 1925; amd. Sec. 24, Ch. 97, L. 1961; amd. Sec. 101, Ch. 147, L. 1963.

Amendment

The 1963 amendment omitted a former first sentence which read: "There is hereby created a fund, to be known as

the 'bounty fund'"; deleted "The tax commission, or" at the beginning of the present text; substituted "earmarked revenue fund" for "bounty fund" near the end of the section; and deleted "and all moneys in said fund are hereby appropriated for such purposes" at the end of the section.

46-1915. (3417.14) Penalty for fraudulent claims. Any person or persons who shall patch up any skin or scalp, or who shall present any punched or patched skin or scalp, or who shall bring in any skin or skins from other states or territory, with the intent to obtain the bounty on the same fraudulently, or any officer who shall sign any certificate herein provided for without first counting the skins and examining the same to determine the kind of skins, and to see that the skin from the scalp or head is properly severed and preserved as hereinbefore provided or shall evade or violate any provision of any law of the state of Montana relative to bounties or bounty claims, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding one thousand dollars (\$1,000.00), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment, and that two-thirds of the fine, if the same be collected, or can be collected, shall be given to the informer, and the balance be deposited in the earmarked revenue fund and used for the administration of this act.

History: En. Sec. 11, Ch. 109, L. 1925; amd. Sec. 102, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "de-

posited in the earmarked revenue fund and used for the administration of this act" for "converted into the state bounty fund" at the end of the section.

CHAPTER 20—IMPOUNDING LIVESTOCK OR DOMESTIC ANIMALS

46-2001. (5175) Impounding animals—duties of cities and towns.

Cross-Reference

Livestock running at large in emergency

road construction areas, secs. 32-319 to 32-321.

CHAPTER 23—GRASS CONSERVATION—GRAZING DISTRICTS

Section 46-2306. Compensation of members—auditing and payment of claims.

46-2331. Fees may be imposed by commission against districts.

46-2306. Compensation of members—auditing and payment of claims.

The members of the commission shall receive no compensation for their services other than the actual amount of traveling expenses actually incurred in respect to the performance of their official duties in attendance at regular or special meetings of the board and ten dollars (\$10.00) per diem for each day actually in attendance at such board meetings. The per diem of each member of the board shall be limited to not exceed the amount of five hundred dollars (\$500.00) per year, such per diem and expenses to be audited, allowed and paid as herein provided.

The commission shall audit all claims, accounts or bills for expenses, per diem, or expenditures incurred by it or its employees. If the commission approves them they shall be processed as provided by law and paid from the moneys of the Montana grass conservation commission in the earmarked revenue fund; provided that the board may by resolution authorize the secretary to audit and certify all expenses, salaries, and expense accounts of the commission, or its employees, and such audit shall be made a part of the commissioner's report to the governor, a copy of which shall be sent to all state districts coming under the provisions of this act.

History: En. Sec. 6, Ch. 208, L. 1939; amd. Sec. 1, Ch. 61, L. 1945; amd. Sec. 25, Ch. 97, L. 1961; amd. Sec. 155, Ch. 147, L. 1963.

"moneys of the Montana grass conservation commission in the earmarked revenue fund" for "state grass conservation fund" in the second sentence of the second paragraph.

Amendment

The 1963 amendment substituted

46-2330. Repealed.**Repeal**

This section (Sec. 28, Ch. 208, L. 1939), relating to the state grass conservation

fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

46-2331. Fees may be imposed by commission against districts. The state grass conservation commission shall have authority and right to impose such fees against the several state grazing districts of the state of Montana and in an amount not in excess of ten cents (10¢) per animal unit based upon the number of animal units per year for which the district grants permits, to defray any or all expenses created by the state grass conservation commission, and said state grass conservation commission shall from such fees and collections pay one per cent (1%) of said fees and collections to the state treasurer to be placed in the general fund, and shall repay to the state treasurer of Montana any and all appropriations provided by the state of Montana for the establishment of this commission and the administration of this act when so collected. When such appropriation by the state of Montana is repaid, the balance of such fund shall be held in the earmarked revenue fund, to be expended by order and direction of the state grass conservation commission for the further administration of the commission, and thereafter said com-

mission shall be maintained by funds obtained from the livestock fees hereinbefore provided. If any state district fails or refuses to pay such fee or fees on or before the first day of May of each year, and after such district shall have been provided with a full report from the commission of all moneys collected and expended by it for its fiscal year next preceding that date, the commission shall have authority to compel and levy, collection and payment by writ of mandate or other appropriate remedy against said state district.

History: En. Sec. 29, Ch. 208, L. 1939; amd. Sec. 1, Ch. 241, L. 1961; amd. Sec. 156, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "earmarked revenue fund" for "state grass conservation fund, herein created" in the second sentence.

CHAPTER 28—CATTLE PROTECTIVE DISTRICTS

- Section 46-2801. Formation of districts authorized—petition of cattle owners—declaration by county commissioners.
 46-2802. Selection of cattle protective committee members.
 46-2803. Powers and duties of protective committees.
 46-2804. Tax levy—deposit of proceeds.
 46-2805. Removal of area from protective district—discontinuance of district—levy saved.

46-2801. Formation of districts authorized—petition of cattle owners—declaration by county commissioners. A cattle protective district embracing all or parts of two or more counties may be formed upon the filing of petitions by the cattle growers of such counties with the boards of county commissioners of each county to be wholly or partially included in the district. Such petitions must be signed by at least fifty-one per cent (51%) of the cattle owners owning fifty-five per cent (55%) of cattle for the protection of which the district is to be formed residing within the area designated as part of the district in each of the counties affected. Upon receipt of such a petition each board of county commissioners must within thirty (30) days declare the designated portion of its county a part of such cattle protective district and the district shall be formed immediately upon the action of the last board of county commissioners to act.

History: En. Sec. 1, Ch. 181, L. 1963.

Title of Act

An act to authorize the creation and operation of cattle protective districts embracing all or portions of two or more

counties, providing for the appointment of district cattle protective committees, providing for the powers, duties and financing of such cattle protective districts.

46-2802. Selection of cattle protective committee members. Each county wholly or partially included in such district shall be entitled to three (3) members of the district cattle protective committee who shall be chosen in the same manner as members of county cattle protective committees under section 46-2701, R.C.M. 1947.

History: En. Sec. 2, Ch. 181, L. 1963.

46-2803. Powers and duties of protective committees. District cattle protective committees shall be organized and have the same powers and

duties as the county cattle protective committees organized under the provisions of Chapter 27, Title 46, R.C.M. 1947.

History: En. Sec. 3, Ch. 181, L. 1963.

46-2804. Tax levy—deposit of proceeds. Said district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed twenty-five cents (25¢) per head on all assessable cattle in the district on the first Monday of March and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property, and when collected to be deposited in the county treasury of one of the counties in the district, to be selected by the district cattle protective committee, in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal or private sources for the purposes of this act.

History: En. Sec. 4, Ch. 181, L. 1963.

46-2805. Removal of area from protective district—discontinuance of district—levy saved. Upon receipt of a petition or petitions signed in the same number and the same manner as the petition to form the district provided for in section 1 [46-2801] of this act, a board of county commissioners may remove the area in its county from the cattle protective district or the boards of county commissioners of all of the counties affected may discontinue the entire cattle protective district, provided, however, that such action in discontinuing said district or part of district shall not affect any levy made prior to the receipt of such petition or petitions, and the proceeds of any levy made shall be used for the purposes as in this act set out.

History: En. Sec. 5, Ch. 181, L. 1963.

TITLE 47—LOANS

Chapter 1. Loans for use or exchange—loan of money, 47-124.

CHAPTER 1—LOANS FOR USE OR EXCHANGE—LOAN OF MONEY

Section 47-124. Legal interest.

47-124. (7725) Legal interest. Except as otherwise provided by the Uniform Commercial Code: Unless there is an express contract in writing, fixing a different rate, interest is payable on all moneys at the rate of six per cent (6%) per annum after they become due on any instrument of writing, except a judgment, on an account stated, and on moneys lent or due on any settlement of accounts from the date on which the balance is ascertained, and on moneys received to the use of another and detained from him. In the computation of interest for a period of less than one (1) year, three hundred and sixty-five (365) days are deemed to constitute a year. [Effective January 1, 1965.]

History: En. Sec. 2585, Civ. C. 1895; amd. Sec. 1, p. 125, L. 1899; re-en. Sec. 5211, Rev. C. 1907; re-en. Sec. 7725, R. C. M. 1921; amd. Sec. 1, Ch. 144, L. 1933; amd. Sec. 11-130, Ch. 264, L. 1963. Cal. Civ. C. Sec. 1917.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

47-125. (7726) Same—any rate not exceeding ten per cent, etc.

Sale of Assets

Where plaintiffs advanced the money and purchased the assets of a business, and at the same time entered an agreement for future resale of a part of the business to defendant, the entire transaction was a

sale and contract of sale, rather than a loan, so that the difference in sale prices was not interest subject to the usury statute. *Favero v. Wynacht*, — M —, 371 P 2d 858, 867.

47-126. (7727) Penalty for usury—action to recover, etc.

References

Favero v. Wynacht, — M —, 371 P 2d 858, 867.

TITLE 48—MARRIAGE

- Chapter 1. Marriage defined—how and by whom contracted and authenticated, 48-118.1, 48-142 to 48-151.
2. Annulling marriage, 48-202, 48-203, 48-207.

CHAPTER 1—MARRIAGE DEFINED—HOW AND BY WHOM CONTRACTED AND AUTHENTICATED

- Section 48-118.1. Application for license.
48-142. Legislative intent—public policy.
48-143. Persons capable of marriage—when consent of parent or guardian required—special authority for underage marriages.
48-144. Application for marriage license—form.
48-145. Advice to license applicants of legislative intent.
48-146. License required for marriage—place of ceremony—county where license issued.
48-147. Applicants under influence of liquor or drug.
48-148. Applicants delinquent in support obligations.
48-149. Posting of notice of application—objections to marriage—hearing on objections—order refusing license—amendment of application—issuance without objection—waiting period.
48-150. Validity of foreign marriages.
48-151. Waiting period after divorce.

48-101. (5695) What constitutes marriage.

Cross-Reference

Cause of action for breach of promise abolished, sec. 17-1202.

Right of Consortium

The mutual rights which arise in the

husband and wife upon marriage, termed contractual or legal rights, include rights which are embraced within the term consortium. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73.

48-102. (5696) Repealed.

Repeal

This section (Sec. 51, Civ. C. 1895), relating to the age of consent for marriage,

was repealed by Sec. 12, Ch. 232, Laws 1963.

48-113. (5707) Repealed.

Repeal

This section (Sec. 57, Civ. C. 1895), relating to marriages contracted outside

the state, was repealed by Sec. 12, Ch. 232, Laws 1963.

48-117, 48-118. (5711, 5712) Repealed.

Repeal

These sections (Secs. 72, 73, Civ. C.

1895), relating to marriage licenses, were repealed by Sec. 12, Ch. 232, Laws 1963.

48-118.1. Application for license. An application for a marriage license shall be filed at least five (5) days before a license shall be issued; provided, that, upon application of either of the parties to a proposed marriage, any judge of a district court may, upon satisfactory evidence being presented to him that either of the parties to the proposed marriage is dangerously ill, such illness being likely to result in death, or upon the request of the parents or guardian, if any, or upon any other circumstance which, in the opinion of the judge of the district court, warrants

special dispensation may by order authorize the license to be issued at any time before the expiration of the said five (5) days; provided, further that such judge shall, before issuing such order, require that the parties making application for such marriage license shall be examined under oath, and shall give the reasons why such license should not be withheld by the clerk of the district court for the statutory period. Such order shall be delivered to the clerk of the district court issuing the license and by him retained as prima-facie evidence of his authority to issue the said marriage license within the five (5) day period.

History: En. Sec. 1, Ch. 71, L. 1961;
amd. Sec. 10, Ch. 232, L. 1963.

Amendment

The 1963 amendment added the second proviso to the first sentence.

48-118.2. Repealed.

Repeal

This section (Sec. 2, Ch. 71, L. 1961), relating to applications for marriage

licenses, was repealed by Sec. 12, Ch. 232, Laws 1963.

48-121. (5715) Repealed.

Repeal

This section (Sec. 76, Civ. C. 1895), relating to evidence required for marriage

licenses, was repealed by Sec. 12, Ch. 232, Laws 1963.

48-142. Legislative intent—public policy. It is the intent of this act to promote the stability and best interest of marriage and the family. Marriage is the institution that is the foundation of the family and of society. Its stability is basic to morality and civilization, and of vital interest to society and the state. The consequences of the marriage contract are more significant to society than those of other contracts, and the public interest must be taken into account always. The seriousness of marriage makes adequate premarital counseling and education for family living highly desirable, and courses thereon are urged upon all persons contemplating marriage. The impairment or dissolution of the marriage relation generally results in injury to the public wholly apart from the effect upon the parties immediately concerned.

History: En. Sec. 1, Ch. 232, L. 1963.

Title of Act

An act relating to marriage; defining legislative intent; defining marriageable age; requiring the delivery of premarital information to applicants; providing for a uniform marriage application form; providing for the issuance of marriage licenses; limiting the issuance of licenses where applicants are under the influence of narcotic drug or alcohol or are failing to support lawful dependents; providing a

procedure for objection to the issuance of marriage licenses; defining the validity and invalidity of marriages performed in other states; amending section 48-118.1, R.C.M., 1947, to provide for testimony under the oath of applicants seeking a waiver of the waiting period between application for and issuance of a marriage license; prohibiting remarriage within six months after divorce; and repealing sections 48-102, 48-113, 48-117, 48-118, 48-118.2 and 48-121, R.C.M., 1947.

48-143. Persons capable of marriage—when consent of parent or guardian required—special authority for underage marriages. (1) Every male person who has attained the full age of eighteen (18) years or who has obtained the permission of the district judge as provided in subparagraph (3) and every female person who has attained the full age of sixteen (16) years or who has obtained the permission of the district judge

as provided in subparagraph (3) shall be capable in law of contracting marriage if otherwise competent.

(2) If either of the contracting parties is between the ages of eighteen (18) and twenty-one (21) if a male, or between the ages of sixteen (16) and eighteen (18) if a female, no license shall be issued without the consent of his or her parents or guardian, or of the parent having the actual care, custody and control of said party, given before the clerk of the court under oath, or certified under the hands of such parents or guardian as aforesaid attested by two adult witnesses, and properly verified by affidavit (or affirmation) before a notary public or other official authorized by law to take affidavits, which certificate shall be filed of record in the office of the said clerk of court at the time of application for said license. If there is no guardian or parent having the actual care, custody and control of said party, then the judge of the district court in the county where the application is pending may, after hearing upon proper cause shown, make an order allowing the marriage of said party.

(3) A male under the age of eighteen (18) or a female under the age of sixteen (16) may lawfully contract to marry and obtain a marriage license if there is first procured the consent of the parent or guardian as provided in subparagraph (2) and if the district judge of the county wherein the application is made, after examining the parties under oath, shall decide that it is to the best interest of such applicant and of the established public policy of the state of Montana, and shall authorize the clerk of the court to issue the license in conformance with the other provisions of this act.

History: En. Sec. 2, Ch. 232, L. 1963.

48-144. Application for marriage license—form. The application for a marriage license shall be in form substantially as follows:

THIS IS A SWORN STATEMENT. IF YOU MAKE FALSE STATEMENTS, YOU MAY BE PROSECUTED FOR PERJURY OR FOR FALSE SWEARING.

State of Montana
County of _____

We, the undersigned, in accordance with statements hereinafter contained and the facts set forth herein, which we and each of us do solemnly swear are true and correct to the best of our knowledge and belief, do hereby make application to the _____ of _____ County, Montana, for a license to marry. We further swear that we may lawfully marry and that our application for a marriage license has not been rejected in any county in Montana (except under the circumstances stated below).

Signature of Male applicant _____

Signature of Female applicant _____

A certified copy of a birth certificate or other uncontrovertible evidence of age must be submitted for the examination of each applicant and of the

clerk. A certified copy of each divorce decree, decree of annulment, and other decrees or orders relating to the custody, care or support of dependent children must also be furnished for examination.

From the Male Applicant

Full name -----
 Race or Color -----
 Usual Residence -----
 Street address or R. F. D. No. -----

City or town, county, state, country -----

When did your residence in this county begin? -----

Have there been any interruptions in your residence in this county since that date? -----

Date of birth ----- Age -----
 month day year last birthday

Usual occupation -----

Industry or business -----

Place of birth -----

Religious denomination -----
 (not compulsory)

Full name of FATHER -----

Race or color -----

Residence -----

Occupation -----

Birthplace -----

Full name of MOTHER -----

Race or color -----

Residence -----

Occupation -----

Birthplace -----

Maiden name of MOTHER -----

Male applicant affirms this
 is his ----- marriage.
 number

Previous marriages were ended
 by: -----

manner date place

Children by prior marriages -----

Are you presently in default
 of a legal obligation to sup-
 port lawful dependent(s)? -----

From the Female Applicant

Full name -----
 Race or Color -----
 Usual Residence -----
 Street address or R. F. D. No. -----

City or town, county, state, country -----

When did your residence in this county begin? -----

Have there been any interruptions in your residence in this county since that date? -----

Date of birth ----- Age -----
 month day year last birthday

Usual occupation -----

Industry or business -----

Place of birth -----

Religious denomination -----
 (not compulsory)

Full name of FATHER -----

Race or color -----

Residence -----

Occupation -----

Birthplace -----

Full name of MOTHER -----

Race or color -----

Residence -----

Occupation -----

Birthplace -----

Maiden name of MOTHER -----

Female applicant affirms this
 is her ----- marriage.
 number

Previous marriages were ended
 by: -----

manner date place

Children by prior marriages -----

Are you presently in default
 of a legal obligation to sup-
 port lawful dependent(s)? -----

Are you under the influence
of intoxicating liquor or
narcotic drug? -----
Your blood relationship to
other applicant, if any? -----
If prior application rejected
in another county, state
place, reasons and date: -----

Are you under the influence
of intoxicating liquor or
narcotic drug? -----
Your blood relationship to
other applicant, if any? -----
If prior application rejected
in another county, state
place, reasons and date: -----

Sworn and subscribed to before
me this ----- day of -----
----- A.D., 19-----

Signature

Title

Marriage to take place -----
date -----

place (city and county)

Application filed -----
date -----

License issued -----
date -----

Future Address

Enter here exact future address
after marriage, if known -----

street address

city or town

state

History: En. Sec. 3, Ch. 232, L. 1963.

48-145. Advice to license applicants of legislative intent. At the time of application for such license, the clerk of the district court shall give to each of the applicants (or mail to an applicant who completes his part of the application outside of the state) a card with the statement of legislative intent printed thereon. Such cards shall be procured by the clerk of the district court at the expense of the county and shall be in form substantially as follows:

MARITAL INFORMATION

Your marriage license will be issued to you under the provisions of Title 48 of the Montana statutes. For your information and advice, that title includes the following provision:

INTENT. It is the intent of this act to promote the stability and best interest of marriage and the family. Marriage is the institution that is the foundation of the family and of society. Its stability is basic to morality and civilization, and of vital interest to society and the state. The consequences of the marriage contract are more significant to society than those of other contracts, and the public interest must be taken into account always. The seriousness of marriage makes adequate premarital counseling and education for family living highly desirable, and courses thereon are urged upon all persons contemplating marriage. The impair-

ment or dissolution of the marriage relation generally results in injury to the public wholly apart from the effect upon the parties immediately concerned.

History: En. Sec. 4, Ch. 232, L. 1963.

48-146. License required for marriage—place of ceremony—county where license issued. No Montana resident shall be joined in marriage within this state until a license has been obtained for that purpose from the clerk of the district court of the county in which one of the parties has resided for at least five (5) days immediately prior to making application therefor.

A license so issued shall authorize a marriage ceremony to be performed in the county where the license is issued or in any other county of this state.

If both parties be nonresidents of the state, such license may be obtained from the clerk of the district court of the county where the marriage ceremony is to be performed. If one of such persons is a nonresident of the county where such license is to issue, his part of the application may be completed sworn to (or affirmed) before the person authorized to accept such applications in the county and state in which he resides.

History: En. Sec. 5, Ch. 232, L. 1963.

48-147. Applicants under influence of liquor or drug. No license to marry shall be issued if, at the time of making application, either of the applicants is under the influence of intoxicating liquor or narcotic drug.

History: En. Sec. 6, Ch. 232, L. 1963.

48-148. Applicants delinquent in support obligations. No license to marry shall be issued by any clerk of the district court if either of the applicants for a license is or has been failing to support lawful dependents when ordered to do so by a court having jurisdiction, unless a judge of a court of record after hearing shall determine that despite such failure said applicant is financially able to discharge the duty to support existing dependents and those resulting from the contemplated marriage and shall authorize the clerk to issue the license. The judge shall have authority to require that the applicant post sufficient security to insure the performance of the support obligation to existing dependents.

History: En. Sec. 7, Ch. 232, L. 1963.

48-149. Posting of notice of application—objections to marriage—hearing on objections—order refusing license—amendment of application—issuance without objection—waiting period. (1) Immediately upon entering an application for a license, the clerk of the district court shall post in his office a notice giving the names and residences of the parties applying therefor, and the date of the application. Any parent, grandparent, child, or natural guardian thereof if a minor, brother, sister or guardian of either of the applicants for a license, or either of the applicants, or the county attorney, believing that the statements of the application are false or insufficient, or that the applicants or either of them are incompetent to marry, may file with the district court in the county in which the license is applied for, a petition under oath, setting forth the

grounds of objection to the marriage and asking for an order requiring the parties making such application to show cause why the license should not be refused. Whereupon, said court, if satisfied that the grounds of objection are prima facie valid, shall issue an order to show cause as aforesaid, returnable as the court may direct, but not more than fourteen (14) days after the date of said order, which shall be served forthwith upon the applicants for such license residing in the state, and upon the clerk before whom such application has been made, and shall operate as a stay upon the issuance of the license until further ordered; if either or both of said applicants are nonresidents of the state said order shall be served forthwith upon said nonresident by publication one time in a newspaper published in the county wherein said application is pending, and by mailing a copy thereof to said nonresident at the address contained in the application.

(2) If, upon hearing, the court finds that the statements in the application are willfully false or insufficient, or that either or both of said parties are not competent in law to marry, the court shall make an order refusing the license, and shall immediately report such matter to the county attorney. If said falseness or insufficiency is due merely to inadvertence, then the court shall permit the parties to amend the application so as to make the statements therein true and sufficient, and upon application being so amended, the license shall be issued. If any party is unable to supply any of the information required in the application, the court may, if satisfied that such inability is not due to willfulness or negligence, order the license to be issued notwithstanding such insufficiency. The costs and disbursements of the proceedings under this section shall rest in the discretion of the court, but none shall be taxed against any county attorney acting in good faith.

(3) If there be no legal objection to said application for license within five (5) days of the application, the clerk of the district court shall issue a marriage license.

History: En. Sec. 8, Ch. 232, L. 1963.

48-150. **Validity of foreign marriages.** (1) All marriages which are valid by the law of the state or nation where at least one (1) of the parties was domiciled at the time of the marriage and where both intended to make their home thereafter are valid in this state.

(2) All marriages which are valid by the law of the state or nation where the marriage took place are valid in this state unless invalid under the laws of the state or nation where at least one (1) of the parties was domiciled at the time of marriage and where both intended to make their home thereafter.

(3) The courts of this state may refuse to give a particular effect to a marriage contracted in another state or nation if to do so would be contrary to a strong public policy of this state.

History: En. Sec. 9, Ch. 232, L. 1963.

48-151. **Waiting period after divorce.** It is unlawful for any person, who is a party to an action for divorce in any court in this state, or for

any Montana resident who is a party to an action for divorce elsewhere, to marry again until six months after judgment of divorce is granted, and the marriage of any such person solemnized before the expiration of six months from the date of the granting of judgment of divorce shall be void.

History: En. Sec. 11, Ch. 232, L. 1963. "Sections 48-102, 48-113, 48-117, 48-118, 48-118.2, and 48-121, R.C.M., 1947, are repealed."

Repealing Clause
Section 12 of Ch. 232, Laws 1963 read

CHAPTER 2—ANNULLING MARRIAGE

Section 48-202. Causes for annulling marriages.

48-203. Actions therefor—when and by whom commenced.

48-207. Legitimacy of children unaffected by annulment—custody and support orders.

48-202. (5729) Causes for annulling marriages. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of majority, and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her; unless, after attaining the age of majority, such party for any time freely cohabited with the other as husband or wife.

2 to 6. * * * [Same as parent volume.] ✓

History: En. Sec. 110, Civ. C. 1895; re-en. Sec. 3636, Rev. C. 1907; re-en. Sec. 5729, R. C. M. 1921; amd. Sec. 2, Ch. 169, L. 1963. Cal. Civ. C. Sec. 82. Based on Field Civ. C. Sec. 54.

Amendment

The 1963 amendment substituted "age of majority" for "age of legal consent" or "age of consent" in two places in subd. 1.

48-203. (5730) Actions therefor—when and by whom commenced. An action to obtain a decree of nullity of marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties, as follows:

1. For causes mentioned in subdivision 1: By the party to the marriage who was married under the age of majority within two years after arriving at the age of majority; or by a parent, guardian, or other person having charge of such nonaged male or female, at any time before such married minor has arrived at the age of majority.

2 to 6. * * * [Same as parent volume.]

History: En. Sec. 111, Civ. C. 1895; re-en. Sec. 3637, Rev. C. 1907; re-en. Sec. 5730, R. C. M. 1921; amd. Sec. 1, Ch. 169, L. 1963. Cal. Civ. C. Sec. 83.

Amendment

The 1963 amendment substituted "age of majority" for "age of legal consent" or "age of consent" in three places in subd. 1.

48-204, 48-205. (5731, 5732) Repealed.

Repeal

These sections (Secs. 112, 113, Civ. C. 1895), relating to children of annulled

marriages, were repealed by Sec. 4, Ch. 169, L. 1963.

48-207. Legitimacy of children unaffected by annulment—custody and support orders. A judgment of nullity of marriage does not affect the legitimacy of children conceived or born before the judgment, and the

judgment must so specify, and the court may during the pendency of the action, or at the time judgment is rendered or at any time thereafter make such order for the custody, care, education, maintenance and support of such children during their minority as may seem necessary or proper.

History: En. Sec. 3, Ch. 169, L. 1963.

"Sections 48-204 and 48-205, R.C.M., 1947, are repealed."

Repealing Clause

Section 4 of Ch. 169, Laws 1963 read

TITLE 49—MAXIMS OF JURISPRUDENCE

CHAPTER 1—MAXIMS OF JURISPRUDENCE

49-103. (8740) Where the reason is the same, the rule should be the same.

References

Duffy v. Lipsman-Fulkerson & Co., 200
F Supp 71, 74.

49-109. (8746) No one can take advantage of his own wrong.

References

Cited in Doull v. Wohlschlager, — M
—, 377 P 2d 758, 765.

TITLE 52—MORTGAGES

- Chapter 1. Mortgages in general, 52-114, 52-116, 52-117.
2. Mortgages of real property, 52-212.
3. Security interests in personal property, 52-312 to 52-314, 52-319 to 52-323.
4. Small tract financing act, 52-401 to 52-417.

CHAPTER 1—MORTGAGES IN GENERAL

- Section 52-114. Assignment of mortgage—recording—notice—address of assignee prerequisite to recording.
52-116. Recording of subordination or waiver agreements—real estate.
52-117. Uniform Commercial Code—applicability.

52-114. (8259) Assignment of mortgage—recording—notice—address of assignee prerequisite to recording. An assignment of a real estate mortgage may be recorded in like manner as a real estate mortgage and the record thereof shall operate as due and legal notice to the mortgagor and all persons subsequently deriving title to the mortgage from the assignor as well as to all other persons including subsequent purchasers, encumbrancers, mortgagees or other lien holders.

Any such assignment shall contain the assignee's post-office address at his place of residence, and shall not be entitled to be recorded or filed unless it contains such post-office address. [Effective January 1, 1965.]

History: En. Sec. 3823, Civ. C. 1895; re-en. Sec. 5744, Rev. C. 1907; re-en. Sec. 8259, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1925; amd. Sec. 1, Ch. 159, L. 1935; amd. Sec. 11-131, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2934.

Amendment

The 1963 amendment deleted "and an assignment of a chattel mortgage may be filed in like manner as a chattel mortgage" before "and the record thereof" in the first paragraph.

52-116. Recording of subordination or waiver agreements—real estate. That a subordination agreement or a waiver in favor of subsequent purchasers, encumbrancers or mortgagees as regards any real estate mortgage of record or the property therein included may be recorded in like manner as a real estate mortgage, and such record shall operate as due and legal notice to the mortgagor and the mortgagee and to all other interested persons. Any such subordination agreement or waiver shall be valid and binding so far as the mortgage therein referred to or the property covered by such mortgage is concerned, when executed by the record holder of the mortgage involved. [Effective January 1, 1965.]

History: En. Sec. 1, Ch. 126, L. 1937; amd. Sec. 11-132, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "and a subordination agreement or a waiver in favor of subsequent purchasers, encumbrancers or mortgagees as regards any chattel mortgage on file, or the personal

property therein described, may be filed in like manner as a chattel mortgage" before "and such record" in the first sentence; deleted "or such filing as the case may be" after "and such record" in the first sentence; and corrected an apparent typographical error which originated in the Laws of 1937.

52-117. Uniform Commercial Code—applicability. In the event of conflict between any provision of this chapter and the Uniform Commercial Code, the latter shall govern. [Effective January 1, 1965.]

History: En. 52-117 by Sec. 11-133, Ch. 264, L. 1963.

CHAPTER 2—MORTGAGES OF REAL PROPERTY

Section 52-212. Mortgages and deeds of trust covering real and personal property.

52-212. (8273) Mortgages and deeds of trust covering real and personal property. All mortgages and deeds of trust covering both real and personal property, executed by a corporation, association or partnership, or by an individual or individuals, are governed by the law relating to mortgages or deeds of trust of real property so far as the real property is concerned, and by the Uniform Commercial Code—Secured Transactions, so far as the personal property is concerned. [Effective January 1, 1965.]

History: En. Sec. 3849, Civ. C. 1895; re-en. Sec. 5756, Rev. C. 1907; amd. Sec. 1, Ch. 72, L. 1921; amd. Sec. 1, Ch. 39, L. 1927; amd. Sec. 1, Ch. 11, L. 1931; amd. Sec. 11-134, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "or assignments for the benefit of creditors" after "deeds of trust" near the beginning of the section; made minor changes in phraseology; added "so far as the real property is concerned, and by the Uniform Commercial Code—Secured Transactions, so far as the personal property is concerned" at the end of the section; deleted from the end of the section language reading, "and must be recorded

in the office of the county clerk of every county where any part of said property is situated, and the same are valid, notwithstanding the possession of such property is retained by such corporation, association or partnership, or by such individual or individuals, but any such mortgages, deeds of trust, or assignments for the benefit of creditors must be accompanied by the affidavit of good faith required to accompany mortgages of personal property, and also by a receipt for an executed copy of the instrument signed on behalf of the corporation by its president, vice-president, secretary, assistant secretary or managing agent" and three other sentences, for text of which see parent volume.

CHAPTER 3—SECURITY INTERESTS IN PERSONAL PROPERTY

Section 52-312. Foreclosure of security interests in personal property—by action—by sheriff's sale.

52-313. Sales—commencement and postponement.

52-314. Report of sales, and filing thereof.

52-319. Notices of security agreements covering livestock; renewals, assignments and satisfactions to be filed by recorder of marks and brands—list to be furnished stock inspectors—livestock markets not liable when notice not filed.

52-320. Contents of notices.

52-321. Duty of secured parties to file satisfactions of security agreements.

52-322. Fees—disposal of.

52-323. Brand recorder or livestock commission not responsible for collection or payment of money under security agreements.

52-301 to 52-311. (8275 to 8285) Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 81, L. 1907; Secs. 1 to 11, Ch. 86, L. 1913; Sec. 1, Ch. 94, L. 1915; Sec. 1, Ch. 152, L. 1919; Sec. 1, Ch. 183, L. 1919; Sec. 1, Ch. 32, L. 1923; Sec. 1, Ch. 116, L. 1925; Sec. 1, Ch. 36, L. 1941; Sec. 1, Ch. 149, L. 1949;

Secs. 1, 2, Ch. 67, L. 1961), relating to execution, filing, duration, subrogation, protection, and proof of mortgages on personal property, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

52-312. (8286) **Foreclosure of security interests in personal property—by action—by sheriff's sale.** An action for the foreclosure of a security interest in personal property may be commenced and conducted in the same manner as provided by law for the foreclosure of mortgages upon real property, and the same may be joined in an action for the recovery of the possession of the property subject to the security interest; but the remedial scope of proceedings for the foreclosure of interests subject to the Uniform Commercial Code—Secured Transactions is governed by Part 5 thereof.

A security agreement covering personal property may contain a clause authorizing the sheriff of the county in which said property, or any part thereof, may be, on request of the secured party and the delivery to the sheriff of a copy of such security agreement, to take possession of such property in case of default and to sell the same. If a security agreement contains such clause and if the secured party complies with the terms thereof, it is hereby made the duty of such sheriff, upon the request of the secured party or his legal representative or assigns, to take possession of such property and to advertise and sell the whole or any part of the same; and at such sale the secured party, or his representatives or assigns, may, in good faith, purchase the property so sold, or any part thereof. The sheriff shall require a reasonable indemnity bond from the secured party or his assigns before taking possession of or selling the said property. Notice of sale, application of the proceeds, liability for deficiency, and effect of disposition shall be as provided in section 9-504 [87A-9-504] of the Uniform Commercial Code. [Effective January 1, 1965.]

History: En. Sec. 3872, Civ. C. 1895; re-en. Sec. 5769, Rev. C. 1907; amd. Sec. 12, Ch. 86, L. 1913; re-en. Sec. 8286, R. C. M. 1921; amd. Sec. 11-135, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "security interest" for "mortgage" throughout the section and made numerous other changes. For previous text, see parent volume.

52-313. (8287) **Sales—commencement and postponement.** All sales made under the provisions of this act shall be commenced between the hours of nine o'clock in the morning and five o'clock of the afternoon of the day specified in the notice, and within thirty days after the seizure of the property, unless the sale shall be postponed. Any sale may be postponed at the discretion of the sheriff one week, by public announcement at the time designated for the sale to take place when there are no bidders, or when the amount offered is grossly inadequate, or upon the request of the debtor. [Effective January 1, 1965.]

History: En. Sec. 13, Ch. 86, L. 1913; re-en. Sec. 8287, R. C. M. 1921; amd. Sec. 1, Ch. 13, L. 1953; amd. Sec. 11-136, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "debtor" for "mortgagor" at the end of the section.

52-314. (8288) **Report of sales, and filing thereof.** Within ten days after the sale of any property subject to a security interest, as herein provided, the person making the sale shall make out in writing a full report, under oath, of all the proceedings in such foreclosure, specifying particularly the property sold, the amount received therefor, the name of the

person to whom sold, the amount of the costs and expenses itemized, a copy of the notice of sale, a statement of the manner in which notice of the sale was given, and the disposition made by him of the proceeds of the sale, and shall file the same in the office of the county clerk and recorder, or other filing officer, where the financing statement respecting the security agreement is filed; which report shall be received in all courts as prima-facie evidence of the facts therein stated. The county clerk and recorder or other filing officer shall properly index said report and attach the report of sale to the financing statement on file. [Effective January 1, 1965.]

History: En. Sec. 14, Ch. 86, L. 1913; re-en. Sec. 8288, R. C. M. 1921; amd. Sec. 11-137, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "property subject to a security interest" near the beginning of the section for "mortgaged property"; substituted "a statement of the manner in which notice of the sale

was given" for "with the statement that the same was posted as herein provided"; inserted "or other filing officer" after "county clerk and recorder" in two places; substituted "financing statement respecting the security agreement" near the end of the first sentence and "financing statement" in the second sentence for "mortgage."

52-315 to 52-317. (8289 to 8290.1) Repealed.

Repeal

These sections (Secs. 15, 16, Ch. 86, L. 1913; Sec. 1, Ch. 100, L. 1923; Sec. 1, Ch. 3, L. 1941), relating to satisfaction of

chattel mortgages and to mortgages on crops and livestock, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

52-319. (3308.1) Notices of security agreements covering livestock, renewals, assignments and satisfactions to be filed by recorder of marks and brands—list to be furnished stock inspectors—livestock markets not liable when notice not filed. The general recorder of marks and brands of the state of Montana shall accept and file in the office of the general recorder of marks and brands, notices of security agreements, renewals, assignments and satisfactions thereof covering livestock owned by any person, firm, corporation, or association, and bearing his, their, or its recorded brand, and shall list such notices on the official records of marks and brands kept by him, and also shall cause to be listed said notices in the offices of the stock inspectors, employed by the livestock commission and stationed at the several central livestock markets where records are kept of marks and brands. All forms on which such notices shall be given shall be prescribed by the livestock commission and shall be furnished by the secured party, who shall give such notice. No livestock market to which livestock is shipped shall be held liable to any secured party for the proceeds of livestock sold through such livestock market by the debtor unless notice of such security agreement is filed as hereinbefore provided. [Effective January 1, 1965.]

History: En. Sec. 1, Ch. 91, L. 1935; amd. Sec. 1, Ch. 36, L. 1949; amd. Sec. 11-138, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "se-

cured party" in two places, "debtor," and "security agreement" respectively for "chattel mortgages," "mortgagee of livestock," "mortgagee," "mortgagor," and "mortgage"; and made a minor change in phraseology.

52-320. (3308.2) Contents of notices. Such notices shall consist of a statement showing the date of security agreement, the names and ad-

dresses of the debtors and secured parties, and/or holders and owners thereof, a description of the livestock covered by said security agreement, and in case of notice of renewal, the notice shall state the date of renewal thereof and in the case of a notice of assignment of a security interest, such notice shall state the date of such assignment, and a description of the security agreement as to which such assignment is made and the parties to the assignment, and such other or additional information as may be required from time to time by the livestock commission of the state of Montana. [Effective January 1, 1965.]

History: En. Sec. 2, Ch. 91, L. 1935; amd. Sec. 11-139, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "se-

curity interest" for "mortgage" and made numerous other changes in the required contents of the notices. For previous text, see parent volume.

52-321. (3308.3) Duty of secured parties to file satisfactions of security agreements. It shall be the duty of the secured parties, who filed notices of security agreements, renewals and assignments thereof, with the general recorder of marks and brands, as provided for in this act, to file notices of satisfaction of such security agreements with the general recorder of marks and brands immediately upon the satisfaction of said security agreement. [Effective January 1, 1965.]

History: En. Sec. 3, Ch. 91, L. 1935; amd. Sec. 11-140, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "se-

cured parties," "security agreements" in two places, and "security agreement," respectively, for "mortgagees," "chattel mortgages," "mortgages," and "mort-

52-322. Fees—disposal of. The general recorder of marks and brands shall charge for filing and listing such notices of security agreements the sum of one dollar (\$1.00) for each recorded brand listed in each security agreement, and for filing and listing each notice of satisfaction or renewal or assignment of such security agreement, the sum of one dollar (\$1.00) for each recorded brand listed therein. All fees so charged shall be paid into the earmarked revenue fund for the use of the livestock commission.

History: En. Sec. 4, Ch. 91, L. 1935; amd. Sec. 1, Ch. 135, L. 1953; amd. Sec. 96, Ch. 147, L. 1963; amd. Sec. 11-141, Ch. 264, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 147, and once by Ch. 264. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section incorporating both amendments. The amendment by Ch. 264,

however, does not take effect until January 1, 1965.

Amendments

Chapter 147, Laws 1963, substituted "the earmarked revenue fund for use of the livestock commission" for "the livestock commission fund" at the end of the section.

Chapter 264, Laws 1963, substituted "security agreement" or "security agreements" for "chattel mortgage" or "chattel mortgages" in three places in the first sentence.

52-323. (3308.5) Brand recorder or livestock commission not responsible for collection or payment of money under security agreements. Neither the general recorder of marks and brands nor the livestock commission, nor any of its agents or employees shall be held responsible or liable to either debtor or secured party for the collection or payment of any money due the holder of any security agreement covering livestock, or renewals,

satisfactions, or assignments thereof as provided in this act; providing the provisions of this act are carried out in good faith. [Effective January 1, 1965.]

History: En. Sec. 5, Ch. 91, L. 1935; amd. Sec. 11-142, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "debtor or secured party" for "mortgagor or

mortgagee"; substituted "security agreement covering livestock" for "livestock mortgage"; and deleted the words "on account of the filing and listing of notices of chattel mortgage" which preceded "or renewals."

CHAPTER 4—SMALL TRACT FINANCING ACT

- Section 52-401. Short title.
 52-402. Declaration of policy.
 52-403. Definitions.
 52-404. Authorization of trust indentures.
 52-405. Qualifications of trustee.
 52-406. Reconveyance upon performance—liability for failure to reconvey.
 52-407. Time within which foreclosure must be commenced.
 52-408. Foreclosure by advertisement and sale.
 52-409. Notice of sale to be mailed, posted and published.
 52-410. Trustee's deed.
 52-411. Possession.
 52-412. Discontinuance of foreclosure proceedings when entire amount of default paid.
 52-413. Disposition of proceeds of sale.
 52-414. Deficiency judgment not allowed.
 52-415. Requests for copies of notice of sale.
 52-416. Trustee's fees and attorney's fees.
 52-417. Trust indenture deemed to be mortgage on real property.

52-401. Short title. This act may be cited as the "Small Tract Financing Act of Montana."

History: En. Sec. 1, Ch. 177, L. 1963.

Title of Act

An act authorizing the optional use of trust indentures as security instruments in the financing of small tracts embracing three acres of land, or less; providing for the conveyance of title to a trustee to secure the performance of an obligation and for reconveyance upon performance; conferring a power of sale upon the trustee under a trust indenture and prescribing the time and manner in which such power may be exercised; providing for the sale of the property at trustee's sale in the event of default; prescribing the form of notice of sale and providing for the recordation, mailing, posting and publication of notice of sale; providing for

trustee's deeds and the form and effect thereof; providing for the disposition of the proceeds of sale; disallowing deficiency judgment in certain cases; providing for possession following sale; defining the fees and expenses chargeable to the grantor of a trust deed; providing for discontinuance of foreclosure by advertisement and sale; relating to the applicability of mortgage laws to trust indenture transactions; amending sections 93-6005, 93-6006, and 93-6007, R.C.M. 1947, relating to sales of real estate under powers of sale in mortgages and rights of redemption, to exclude therefrom trust indentures as defined in this act; and providing a short title, a severability clause and an effective date.

52-402. Declaration of policy. Because the financing of homes and business expansion is essential to the development of the state of Montana, and because such financing, usually involving areas of real estate of not more than three acres, has been restricted by the laws relating to mortgages of real property, and because more such financing of homes and business expansion is available if the parties can use security instruments and procedures not subject to all the provisions of the mortgage laws, it is hereby declared to be the public policy of the state of Montana to

permit the use of trust indentures for estates in real property of not more than three acres as hereinafter provided.

History: En. Sec. 2, Ch. 177, L. 1963.

52-403. Definitions. As used in this act, unless the context requires otherwise:

(1) "Beneficiary" means the person named or otherwise designated in a trust indenture as the person for whose benefit a trust indenture is given, or his successor in interest, and who shall not be the trustee.

(2) "Grantor" means the person conveying real property by a trust indenture as security for the performance of an obligation.

(3) "Trust indenture" means an indenture executed in conformity with this act and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary.

(4) "Trustee" means a person to whom the legal title to real property is conveyed by a trust indenture, or his successor in interest.

(5) "Three acres" means three acres of land.

Where the trust indenture states that the real property involved does not exceed three acres, such statement shall be binding upon all parties and conclusive as to compliance with the provisions of this act relative to the power to make a transfer, trust, and power of sale.

History: En. Sec. 3, Ch. 177, L. 1963.

52-404. Authorization of trust indentures. Transfers in trust of any interest in real property of an area not exceeding three acres may be made to secure the performance of an obligation of a grantor, or any other person named in the indenture, to a beneficiary; provided that it shall be unlawful to substitute a trust indenture for any mortgage in existence on the effective date of this act. Where any transfer in trust of any interest in real property is hereafter made to secure the performance of such an obligation, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which such transfer is security; and a trust indenture executed in conformity with this act may be foreclosed by advertisement and sale in the manner hereinafter provided, or, at the option of the beneficiary, by judicial procedure as provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised by the trustee without express provision therefor in the trust indenture.

History: En. Sec. 4, Ch. 177, L. 1963.

52-405. Qualifications of trustee. (1) The trustee of a trust indenture under this act shall be:

(a) An attorney who is licensed to practice law in Montana; or

(b) A bank, trust company, or savings and loan association authorized to do business in Montana under the laws of Montana or the United States; or

(c) A title insurance or abstract company authorized to do business in Montana under the laws of Montana.

(2) The beneficiary may appoint a successor trustee at any time by filing for record in the office of the clerk and recorder of each county in which the trust property or some part thereof is situated, a substitution of trustee. The substitution shall identify the trust indenture by stating the names of the original parties thereto and the date of recordation and the book and page where the same is recorded, shall state the name and mailing address of the new trustee, and shall be executed and acknowledged by all of the beneficiaries designated in the trust indenture, or their successors in interest. From the time the substitution is filed for record, the new trustee shall be vested with all the power, duties, authority, and title of the trustee named in the trust indenture and of any successor trustee.

History: En. Sec. 5, Ch. 177, L. 1963.

52-406. Reconveyance upon performance—liability for failure to reconvey. Upon performance of the obligation secured by the trust indenture, the trustee upon written request of the beneficiary shall reconvey the interest in real property described in the trust indenture to the grantor. In the event the obligation is performed and the beneficiary refuses to request reconveyance or the trustee refuses to reconvey the property, the beneficiary or trustee so refusing shall be liable as provided by law in the case of refusal to execute a discharge or satisfaction of a mortgage on real property.

History: En. Sec. 6, Ch. 177, L. 1963.

52-407. Time within which foreclosure must be commenced. The foreclosure of a trust indenture by advertisement and sale or by judicial procedure shall be commenced within the time, including extensions, provided by law for the foreclosure of a mortgage on real property.

History: En. Sec. 7, Ch. 177, L. 1963.

52-408. Foreclosure by advertisement and sale. (1) The trustee may foreclose a trust indenture by advertisement and sale under this act if:

(a) The trust indenture, any assignments of the trust indenture by the trustee or the beneficiary, and any appointment of a successor trustee are recorded in the office of the clerk and recorder of each county in which the property described in the trust indenture, or some part thereof, is situated;

(b) There is a default by the grantor or other person owing an obligation, the performance of which is secured by the trust indenture, or by their successors in interest, with respect to any provision in the indenture which authorizes sale in the event of default of such provision; and

(c) The trustee or beneficiary shall have filed for record in the office of the clerk and recorder in each county where the property described in the indenture, or some part thereof, is situated, a notice of sale, duly executed and acknowledged by such trustee or beneficiary, setting forth:

(i) The names of the grantor, trustee, and beneficiary in the trust indenture and the name of any successor trustee;

(ii) A description of the property covered by the trust indenture;

(iii) The book and page of the mortgage records where the trust indenture is recorded;

(iv) The default for which the foreclosure is made;

(v) The sum owing on the obligation secured by the trust indenture;

(vi) The trustee's or beneficiary's election to sell the property to satisfy the obligation;

(vii) The date of sale, which shall not be less than 120 days subsequent to the date on which the notice of sale is filed for record, and the time of sale, which shall be between the hours of 9:00 a.m. and 4:00 p.m., Mountain Standard Time;

(viii) The place of sale which shall be at the courthouse of the county or one of the counties where the property is situated, or at the location of the property, or at the trustee's usual place of business if within the county or one of the counties where the property is situated.

(2) A trust deed may be foreclosed by advertisement and sale in the manner hereinafter provided.

History: En. Sec. 8, Ch. 177, L. 1963.

52-409. Notice of sale to be mailed, posted and published. (1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

(i) The grantor, at the grantor's address as set forth in the trust indenture, or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;

(ii) Each person designated in the trust indenture to receive notice of sale whose address is set forth therein, at such address;

(iii) Each person who has filed for record a request for a copy of notice of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request;

(iv) Any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) Any person having a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold;

(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property, or some part thereof, is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least 3 public places in each county in which the property, or some part thereof, is situated. The posting or the last pub-

lication shall be made at least 20 days before the date fixed for the trustee's sale.

(2) On or before the date of sale, there shall be filed for record in the office of the clerk and recorder of each county where the property, or some part thereof, is situated, affidavits of mailing, posting and publication showing compliance with the requirements of this section. On the date and at the time and place designated in the notice of sale, the trustee or his attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels and any person, including the beneficiary under the trust indenture, but excluding the trustee, may bid at the sale. The person making the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given.

(3) The purchaser at the sale shall pay the price bid in cash, and, upon receipt of payment, the trustee shall execute and deliver a trustee's deed to the purchaser. In the event the purchaser refuses to pay the purchase price, the person conducting the sale shall have the right to re-sell the property at any time to the highest bidder. The party refusing to pay shall be liable for any loss occasioned thereby, and the person making the sale may also, in his discretion, thereafter reject any other bid of such person.

History: En. Sec. 9, Ch. 177, L. 1963.

52-410. Trustee's deed. (1) The trustee's deed to the purchaser at the trustee's sale may contain, in addition to a description of the property conveyed, recitals of compliance with the requirements of this act relating to the exercise of the power of sale and the sale, including recitals of the facts concerning the default, the notice given, the conduct of the sale, and the receipt of the purchase money from the purchaser.

(2) When the trustee's deed is recorded in the deed records of the county or counties where the property described in the deed is situated, the recitals contained in the deed and in the affidavits required under subsection (2) of section 9 [52-409 (2)] of this act, shall be prima-facie evidence in any court of the truth of the matters set forth therein, except that the same shall be conclusive evidence in favor of subsequent bona fide purchasers and encumbrancers for value and without notice.

(3) The trustee's deed shall operate to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest and claim of the grantor and his successors in interest and of all persons claiming by, through or under them, in and to the property sold including all such right, title, interest and claim in and to such property acquired by the grantor or his successors in interest subsequent to the execution of the trust indenture.

History: En. Sec. 10, Ch. 177, L. 1963.

52-411. Possession. The purchaser at the trustee's sale shall be entitled to possession of the property on the tenth day following the sale,

and any persons remaining in possession after that date under any interest, except one prior to the trust indenture, shall be deemed to be tenants at will.

History: En. Sec. 11, Ch. 177, L. 1963.

52-412. Discontinuance of foreclosure proceedings when entire amount of default paid. Whenever all or a portion of any obligation secured by a trust indenture has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust indenture, including a default in the payment of interest or of any installment of principal, or by reason of failure of the grantor to pay, in accordance with the terms of such trust indenture, taxes, assessments, premiums for insurance or advances made by the beneficiary in accordance with the terms of such obligation or of such trust indenture, the grantor or his successor in interest in the trust property or any part thereof or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust indenture, at any time prior to the time fixed by the trustee for the trustee's sale if the power of sale is to be exercised, may pay to the beneficiary or his successor in interest the entire amount then due under the terms of such trust indenture and the obligation secured thereby (including costs and expenses actually incurred and reasonable trustee's and attorney's fees) other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon all proceedings theretofore had or instituted to foreclose the trust indenture shall be canceled and the obligation and the trust indenture shall be reinstated and shall be and remain in force and effect the same as if no such acceleration had occurred. If the default is cured and the obligation and the trust indenture reinstated in the manner hereinabove provided, the beneficiary, or his assignee, shall, on demand of any person having an interest in the trust property, execute, acknowledge and deliver to him a request that the trustee execute, acknowledge and deliver a cancellation of the recorded notice of sale under such trust indenture. Any beneficiary under a trust indenture, or his assignee, who, for a period of 30 days after such demand refused to request the trustee to execute, acknowledge and deliver such cancellation shall be liable to the person entitled to such request for all damages resulting from such refusal. A cancellation of a recorded notice of sale shall, when executed and acknowledged, be entitled to be recorded and shall be sufficient if it sets forth a reference to the trust indenture and the book and page where the same is recorded, a reference to the notice of sale and to the book and page where the same is recorded and a statement that such notice of sale is canceled.

History: En. Sec. 12, Ch. 177, L. 1963.

52-413. Disposition of proceeds of sale. The trustee shall apply the proceeds of the trustee's sale as follows: (1) To the costs and expenses of exercising the power of sale and of the sale, including reasonable trustee's fees and attorney's fees;

(2) To the obligation secured by the trust indenture;

(3) The surplus, if any, to the person or persons legally entitled thereto, or the trustee, in his discretion, may deposit such surplus with the clerk and recorder of the county in which the sale took place. Upon depositing such surplus, the trustee shall be discharged from all further responsibility therefor and the clerk and recorder shall deposit the same with the county treasurer subject to the order of the district court of such county.

History: En. Sec. 13, Ch. 177, L. 1963.

52-414. Deficiency judgment not allowed. When a trust indenture executed in conformity with this act is foreclosed by advertisement and sale, no other or further action, suit or proceedings shall be taken, nor judgment entered for any deficiency, against the grantor or his surety, guarantor, or successor in interest, if any, on the note, bond or other obligation secured by the trust indenture, or against any other person obligated on such note, bond or other obligation.

History: En. Sec. 14, Ch. 177, L. 1963.

52-415. Requests for copies of notice of sale. At any time subsequent to the recordation of a trust indenture and prior to the recordation of notice of sale under the indenture, any person desiring a copy of any notice of sale under a trust indenture as provided in subsection (1) of section 9 [52-409(1)] of this act may cause to be filed for record in the office of the county clerk and recorder of the county or counties in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of any notice of sale, showing service upon the trustee. The request shall contain the name and address of the person requesting a copy of the notice and shall identify the trust indenture by stating the names of the parties to the indenture, the date of recordation of the indenture, and the book and page where the indenture is recorded. The county clerk and recorder shall immediately make a cross reference of the request to the trust indenture either on the margin of the page where the trust indenture is recorded or in some other suitable place. No request, statement, or notation placed on the record pursuant to this section shall affect title to the property or be deemed notice to any person that any person so recording the request has any right, title, interest in, lien, or charge upon the property referred to in the trust indenture.

History: En. Sec. 15, Ch. 177, L. 1963.

52-416. Trustee's fees and attorney's fees. Reasonable trustee's fees and attorney's fees to be charged to the grantor in the event of foreclosure by advertisement and sale shall not exceed, in the aggregate, 5% of the amount due on the obligation, both principal and interest, at the time of the trustee's sale. If prior to the trustee's sale the obligation and the trust indenture shall be reinstated in accordance with provisions of section 12 [52-412] of this act, the reasonable trustee's fees and attorney's fees to be charged to the grantor shall not exceed \$150.00. In no event shall trustee's fees and attorney's fees be charged to a grantor on account of any services rendered prior to the commencement of foreclosure.

History: En. Sec. 16, Ch. 177, L. 1963.

52-417. Trust indenture deemed to be mortgage on real property. A trust indenture is deemed to be a mortgage on real property and is subject to all laws relating to mortgages on real property except to the extent that such laws are inconsistent with the provisions of this act, in which event the provisions of this act shall control. For the purpose of applying the mortgage laws, the grantor in a trust indenture is deemed the mortgagor and the beneficiary is deemed the mortgagee.

History: En. Sec. 17, Ch. 177, L. 1963.

Separability Clause

Section 21 of Ch. 177, Laws 1963 read "Severability clause. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is invalid in one or more of its applications, the part

remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 22 of Ch. 177, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

TITLE 53—MOTOR VEHICLES

- Chapter 1. Registration of motor vehicles—duties of registrar, 53-106.1, 53-110, 53-114, 53-122, 53-129.
6. Additional fees or taxes on motor vehicles, 53-615, 53-638.1, 53-642.
 7. Reciprocity and proportional registration, 53-701 to 53-724.
 8. Markings on trucks and heavy vehicles, 53-801 to 53-803.

CHAPTER 1—REGISTRATION OF MOTOR VEHICLES— DUTIES OF REGISTRAR

- Section 53-106.1. Registration of motor vehicles owned and operated solely as collectors' items—number plates for such motor vehicles.
- 53-110. Filing of liens, rights, procedure, fees.
- 53-114. Application for registration of motor vehicles and payment of license fees thereon.
- 53-122. Registration fees of motor vehicles—fees—disposal of proceeds—fee for half year—dealers' registration and transfer thereof—public owned vehicles exempt from license or registration fees—license or registration fees for trailers, house trailers, semitrailers and tractors providing for deposit of all fees, other than license fees, except dealer license fees, collected by the registrar of motor vehicles, in the motor vehicle recording account for the payment of expenses of the maintenance and operation of the department of the registrar of motor vehicles.
- 53-129. Foreign vehicles used in gainful occupation—reciprocity board may make reciprocal agreements to exempt.

53-106.1. Registration of motor vehicles owned and operated solely as collectors' items—number plates for such motor vehicles. Any owner of a motor vehicle manufactured more than thirty (30) years prior to the year 1963, solely as a collectors' item and not for general transportation purposes may file with the registrar of motor vehicles an application for the registration of such motor vehicle stating the name and address of the owner, the name and address of the person from whom purchased, the make of the motor vehicle, the gross weight thereof, the year and number of the model, and the manufacturer's identification number and serial number, and setting forth a specific statement that the vehicle is owned and operated solely as a collectors' item and not for general transportation purposes; and said application shall be sworn to before an officer authorized to administer oaths. The registration fee for all such motor vehicles weighing twenty-eight hundred and fifty (2850) pounds or less shall be five dollars (\$5.00), and the registration fee for all such motor vehicles weighing more than twenty-eight hundred and fifty (2850) pounds shall be ten dollars (\$10.00).

Upon receipt of said application for registration and payment of the registration fee above provided for the registrar shall file said application and register the motor vehicle therein described in the manner specified in section 53-101, and shall deliver to the applicant two (2) license plates bearing the inscription, "Pioneer—Montana" and the registration number, but the year of issuance shall not be shown thereon. No annual renewal of the registration of any such motor vehicle shall be required, and the

same shall be valid as long as the vehicle is in existence; provided, however, that upon any sale of such motor vehicle, the purchaser shall be required to renew the registration thereof and pay the license fees hereinbefore specified.

History: En. 53-106.1 by Sec. 1, Ch. 123, L. 1955; amd. Sec. 1, Ch. 86, L. 1963.

Amendment

The 1963 amendment substituted "thirty

(30) years prior to the year 1963" in the first part of the first paragraph for "thirty (30) years prior to the date of the application referred to hereunder."

53-109. (1758.2) Transfer of title or interest.

Incomplete Transfer

Chattel mortgages given for the purchase of an automobile were without consideration where vendor failed to obtain certificates of registration and ownership

from the registrar of motor vehicles which were necessary to pass title to the buyer. *Sonnek v. Universal C.I.T. Credit Corp.*, — M —, 374 P 2d 105, 108.

53-110. (1758.3) Filing of liens, rights, procedure, fees. (a). * * *
[Same as parent volume.] ✓

(b) Satisfaction or statements of release filed with the registrar of motor vehicles under this act shall be retained by him for a period of eight (8) years after receipt, after which they may be destroyed. Chattel mortgages, conditional sales contracts, leases, or other liens filed with the registrar, and all renewals and assignments thereof, shall be retained by him for a period of eight (8) years after the maturity date stated in such mortgage, conditional sales contract, lease, or other lien, or renewal, or if no maturity date is therein stated, for a period of thirteen (13) years after receipt, after which they may be destroyed.

(c) From and after the filing of any mortgage, conditional sales contract, lease, or other lien, or copy thereof on any motor vehicle, as herein provided, then and in that event such mortgage, conditional sales contract, lease or other lien shall be constructive notice of the said mortgage, conditional sales contract, lease or other lien and its contents to subsequent purchasers and encumbrancers.

(d) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle the mortgagee or vendor has the same remedies as in the case of other personal property, except that the remedy of seizure prescribed by section 52-312 shall be available upon delivery to the sheriff of the original instrument or a copy certified by the registrar of motor vehicles and such undertaking as may be required by the sheriff. In case of attachment of motor vehicles all the provisions of section 93-4338 shall be applicable except that deposits must be made with the registrar of motor vehicles:

(e) to (h). * * * [Same as parent volume.] ✓ *the PV*
[Effective January 1, 1965.]

History: En. Subd. 4, Sec. 2, Ch. 159, L. 1933; amd. Sec. 7, Ch. 72, L. 1937; amd. Sec. 3, Ch. 148, L. 1943; amd. Sec. 3, Ch. 63, L. 1945; amd. Sec. 11-143, Ch. 264, L. 1963.

Amendment

The 1963 amendment completely re-

wrote subsection (b), for previous text of which see parent volume; inserted "or conditional sales contract" near the beginning of subsection (d); substituted "mortgagee or vendor has the same remedies as in the case of other personal property, except that the remedy of seizure prescribed by section 52-312 shall be avail-

able" in subsection (d) for "mortgagee may foreclose his mortgage as in the case of other personal property, and upon default under a conditional sales contract covering a motor vehicle the vendor shall have the remedies prescribed by section 74-207"; substituted the reference to sec-

tion 93-4338 in the latter part of subsection (d) for a reference to section 52-309; deleted the words "instead of the county treasurer" from the end of subsection (d); and made minor changes in phraseology and punctuation in subsection (d).

53-114. (1759) Application for registration of motor vehicles and payment of license fees thereon. (1) to (4). * * * [Same as parent volume.] ✓

(5) Motor vehicles are hereby declared to be assessable for taxation as of and on the first day of January in each year irrespective of the time fixed by law for the assessment of other classes of personal property, and irrespective of whether or not the levy and tax may be a lien upon real property within the state of Montana, provided that in no event shall any motor vehicle be the subject to assessment, levy and taxation more than once in each year.

(6) The applicant for original registration of any wholly new and unused motor vehicle acquired by original contract after the first day of January of any year shall be required, whenever such vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by section 53-617, irrespective of whether or not such vehicle was in the state of Montana on the first day of January of such year.

(7) Upon accepting application for registration or reregistration of any motor vehicle which is subject to taxation in this state on January 1st in any year, and upon payment of taxes, the county treasurer shall stamp on said application: "taxes on this vehicle due January 1st of current year paid by applicant, prior applicant or owner and this vehicle is eligible for registration."

Upon accepting application for registration of any motor vehicle which was not subject to taxation in this state on January 1st in any year, the county treasurer shall indicate such fact by proper entry on said application.

(8) The registrar of motor vehicles shall have authority to make proper entry on any certificate of title to any motor vehicle respecting payment of taxes in accord with the facts.

History: En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R. C. M. 1921; amd. by repeal Subd. 4, Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963.

Amendment

The 1963 amendment deleted the words "except as hereinafter provided" which followed "Motor vehicles" at the beginning of subsection (5); deleted from the end of subsection (5) a proviso reading, "and provided, further, that new motor vehicles, and used motor vehicles which

have not previously been assessed and licensed during the current year, when held for sale in the stock of any duly licensed motor vehicle dealer or used motor vehicle dealer, are hereby declared to be merchandise and shall be assessed as of the first Monday in March in each year in the same manner as other stocks of merchandise"; and deleted from the end of the second paragraph of subsection (7) a clause reading, "and in case such motor vehicle shall have been assessed for taxation as a part of the stock of merchandise of a licensed dealer, the county treasurer shall indicate such fact by proper entry on said application, and the applicant for registration shall not be required to pay the personal property tax on any motor vehicle so assessed as merchandise."

53-122. (1760) Registration fees of motor vehicles—fees—disposal of proceeds—fee for half year—dealers' registration and transfer thereof—public owned vehicles exempt from license or registration fees—license or registration fees for trailers, house trailers, semitrailers and tractors providing for deposit of all fees, other than license fees, except dealer license fees, collected by the registrar of motor vehicles, in the motor vehicle recording account for the payment of expenses of the maintenance and operation of the department of the registrar of motor vehicles. Registration or license fees shall be paid upon registration or reregistration of motor vehicles, trailers, house trailers, semitrailers and dealers in motor vehicles or trailers in accordance with this act, as follows:

Dealers in motor vehicles other than motorcycles, a minimum fee of thirty dollars (\$30.00) which shall entitle such dealer to two (2) sets of number plates, and five dollars (\$5.00) additional fee for each additional set of number plates up to six (6) sets, and two dollars (\$2.00) additional fee for each additional set of number plates, as may be applied for by such dealer; provided, that each dealer be required to furnish the registrar of motor vehicles a statement showing the makes of motor vehicles handled by him, and the total number of each make sold by him during the preceding year, and that he not be issued a license unless he so conforms;

Dealers in motorcycles, trailers including house trailers, fifteen dollars (\$15.00);

Motor vehicles, weighing twenty-eight hundred and fifty (2850) pounds, or under, other than motor trucks, five dollars (\$5.00);

Motor vehicles, weighing over twenty-eight hundred and fifty (2850) pounds, other than motor trucks ten dollars (\$10.00);

Electrically driven passenger vehicles, ten dollars (\$10.00);

All motorcycles, two dollars (\$2.00);

Tractors and/or trucks, ten dollars (\$10.00);

Buses shall be classed as motor trucks and licensed accordingly;

Trailers and semitrailers less than two thousand five hundred (2,500) pounds maximum gross loaded weight and house trailers of all weights, two dollars (\$2.00);

Trailers and semitrailers over two thousand five hundred (2,500) up to six thousand (6,000) pounds maximum gross loaded weight, except house trailers, five dollars (\$5.00);

Trailers and semitrailers over six thousand (6,000) pounds maximum gross loaded weight, ten dollars (\$10.00);

Trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery and bridge material exclusively, new and secondhand, and trailers used exclusively for the transportation of road machinery and bridge materials, shall pay a fee of fifteen dollars (\$15.00) annually, regardless of size or capacity.

All rates to be twenty-five per cent (25%) higher for motor vehicles, trailers and semitrailers, when not equipped with pneumatic tires;

Bicycles with motor attachment, one dollar (\$1.00);



Tractors, as specified in this section, shall mean any motor vehicle, except passenger cars used for towing a trailer or semitrailer.

All license or registration fees collected by the county treasurer of the county in which any motor vehicle is registered shall be credited to the motor vehicle license fund of said county. The funds in said county motor vehicle fund shall be used as follows:

(a) Fifty per cent (50%) of the net license fees derived from the registration of motor vehicles, the owners of which reside within the boundaries of any incorporated city of the state of Montana, having a population of thirty-five thousand (35,000) or more, or the owners of which reside within the boundaries of any incorporated city of the state of Montana which lies within one (1) mile of the city limits of an incorporated city of the state of Montana having a population of thirty-five thousand (35,000) or more, according to the federal census of 1930, and twenty-five per cent (25%) of the net license fees derived from the registration of motor vehicles, the owners of which reside within the boundaries of any city in the state of Montana having a population of ten thousand (10,000), or more, according to the federal census of 1950, and which city is situated in a county which has an area of less than seven hundred and fifty (750) square miles, shall be held by the county treasurer and segregated from other county road funds and designated as "city road fund," to be used in the city from which fees were derived for the construction of permanent streets within the incorporated limits of such city.

(b) The license fees held in the city road fund, as hereinbefore provided, at the end of each thirty (30) day period beginning March 1, 1955, be paid by the county treasurer to the city treasurer to be held by such city treasurer in a separate fund designated as the "city road fund," shall be used by the city council of such city having the population of thirty-five thousand (35,000) or more, or by the city council of such city which lies within one (1) mile of the city limits of an incorporated city of the state of Montana, having a population of thirty-five thousand (35,000) or more, according to the federal census of 1930, or by the city council of such city having a population of ten thousand (10,000), or more, according to the federal census of 1950 and situated in a county which has an area of less than seven hundred and fifty (750) square miles, only for the construction of permanent highways and streets within the boundaries of such incorporated city. Provided, that all construction of public highways and streets, the cost of which is to be paid out of the fund derived from the license fees as herein provided, shall be under the supervision of the county surveyor of the county within whose boundaries such city is situated, subject to the control of the said city council and surveyor to designate the public highway or street upon which the work is to be done, and the type of pavement to be used, and provided further, that the cost of the supervision of the county surveyor shall not exceed five per cent (5%) of the cost of said work.

(c) In every county which does not have within its borders a city and area coming within the provisions of subsections (a) and (b) above, the net license fee derived from the registration of motor vehicles shall

be by the registrar of motor vehicles transmitted to, and paid over to the county treasurer of each such county and shall be allocated and divided by the county treasurer as hereinafter provided. The motor vehicle license fund in each such county shall be divided between accounts designated as "city road fund" and "county road fund" in a pro rata manner based upon the total number of miles of all public streets and highways situated within the limits of incorporated cities and towns within each county as compared with the total number of miles of public streets and highways situated within the county, but outside the corporate limits of any incorporated cities and towns.

The license fees held in the city road fund, as hereinabove provided shall be at the end of each thirty (30) day period beginning March 1, 1964, be paid by the county treasurer to the treasurer of each incorporated city or town within the county in a pro rata manner based upon the number of miles of all public streets and highways situated within such city or town as compared to the total number of miles of all public streets and highways within the limits of all incorporated cities and towns within the county. The city or town treasurer shall hold said moneys in a separate fund designated as the "city road fund" which shall be used by the city or town council only for the construction and repair of streets and highways within the corporate limits of such incorporated city or town.

The net license fees derived from the registration of vehicles shall be used by said county for the construction, repair and maintenance of all public highways, except state and federal highways, within the boundaries of said county.

If any dealer, or motor vehicle, house trailer, trailer, or semitrailer is originally registered six (6) months after the time of registration as set by law, the registration or license fee for the remainder of such year shall be one-half ($\frac{1}{2}$) of the regular fee above given.

A dealer in motor vehicles or trailers who shall maintain more than one (1) place of business or who shall maintain any branch establishment or establishments, must register and pay a registration or license fee for each such place of business or establishment.

A registered dealer, who may sell or dispose of his entire business to any other person, may have his certificate of registration transferred to such purchaser upon filing with the registrar of motor vehicles a statement containing the name of the registered dealer, the number under which such dealer is registered, the name of the purchaser, and the location of the place of business so sold. Upon the filing of such statement, accompanied by a filing fee of one dollar (\$1.00), the registrar of motor vehicles shall note upon the registration record of such dealer the change of ownership. But no certificate of registration can be transferred unless the entire business of the dealer holding such certificate of registration be sold and disposed of, and no such certificate of registration can be transferred to any person other than the purchasers of such business.

The provisions of this act with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semitrailers or tractors owned or controlled by the United States of America

or any state, county or city, but in all other respects the provisions of this act shall be applicable to and binding upon motor vehicles, tractors, trailers, and semitrailers.

All fees, other than license fees, mentioned and described in sections 53-110 and 53-112, and in section 53-135, shall hereafter be deposited in, and paid into, the earmarked revenue fund and shall be used to pay all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles. Any reference in this code to the motor vehicle recording fund or the motor vehicle administration fund shall be taken to mean the motor vehicle recording account in the earmarked revenue fund.

Whenever, in the judgment of the state board of examiners, there shall be in said motor vehicle recording account more moneys than are reasonably required or needed to pay all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles, such board shall distribute such unneeded surplus or excess to the fifty-six (56) counties of the state in a pro rata manner based upon the total number of motor vehicles registered in each county.

The board of county commissioners of each county which does not have within its borders a city and area coming within the provisions of subsections (a) and (b) above shall prior to March 1 of each year, beginning with the year 1964, determine the number of miles of public streets and highways situated in each incorporated city and town in the county, and the number of miles of public streets and highways within the county, but outside the corporate limits of the incorporated cities and towns, in order that the motor vehicle license and registration fees can be divided between the "county road fund" and each "city road fund" in the pro rata manner as provided in this act. The board of county commissioners shall at the same time also compute the percentage of said motor vehicle license and registration fees to be paid by the county treasurer to the treasurer of each incorporated city and town and also the percentage to be deposited in the county road fund.

History: En. Sec. 6, Ch. 75, L. 1917; amd. Sec. 2, Ch. 207, L. 1919; amd. Sec. 1, Ch. 199, L. 1921; re-en. Sec. 1760, R. C. M. 1921; amd. Sec. 1, Ch. 107, L. 1923; amd. Sec. 1, Ch. 88, L. 1927; amd. Sec. 1, Ch. 182, L. 1929; amd. Sec. 1, Ch. 103, L. 1933; amd. Sec. 1, Ch. 38, Ex. L. 1933; amd. Sec. 1, Ch. 138, L. 1937; amd. Sec. 1, Ch. 125, L. 1939; amd. Sec. 2, Ch. 154, L. 1943; amd. Sec. 2, Ch. 200, L. 1945; amd. Sec. 1, Ch. 201, L. 1945; amd. Sec. 1, Ch. 221, L. 1951; amd. Sec. 1, Ch. 215, L. 1953; amd. Sec. 1, Ch. 41, L. 1955; amd. Sec. 228, Ch. 147, L. 1963; amd. Sec. 1, Ch. 178, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 147 and once by Ch. 178. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear

to conflict, the compiler has made a composite section incorporating both 1963 amendments.

Amendments

Chapter 147, Laws 1963 substituted "the earmarked revenue fund and shall be used to pay" in what is now the third last paragraph for "the motor vehicle recording fund of said registrar (sometimes called the motor vehicle administrative fund) out of which shall be paid"; added the second sentence to the same paragraph; deleted a former next to last paragraph reading, "There shall be immediately transferred from the motor vehicle fund of the registrar of motor vehicles to the said motor vehicle recording fund all moneys now in said motor vehicle fund which were collected by the registrar of motor vehicles as fees other than license fees"; and substituted "motor vehicle recording account"

for "motor vehicle recording fund" in the last paragraph, now the next to last paragraph.

Chapter 178, Laws 1963, completely rewrote paragraph (c), for previous text of

which see parent volume; inserted two new paragraphs immediately after paragraph (c); and added the last paragraph of the section.

53-129. (1760.7) Foreign vehicles used in gainful occupation—reciprocity board may make reciprocal agreements to exempt. Before any foreign licensed motor vehicle shall be operated on the highways of this state for hire, compensation or profit, or before the owner thereof uses the vehicle while engaged in gainful occupation or business enterprise, in the state of Montana, including highway work, the owner of such vehicle shall make application to a county treasurer for registration, upon an application form furnished by the registrar of motor vehicles. Upon satisfactory evidence of ownership submitted to such county treasurer, the treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle. The treasurer shall thereupon issue to the applicant a copy of the application entitled "Owner's Certificate of Registration Receipt" and forward a duplicate copy of certificate of registration to the registrar of motor vehicles. The treasurer shall at the same time issue to the applicant the proper license plates or other identification markers, which shall at all times be displayed upon such vehicle, when operated or driven upon roads and highways of this state, during the period of the life of such license. The registration receipt shall not constitute evidence of ownership, but shall only be used for registration purposes. No Montana certificate of title shall be issued for this type of registration. This paragraph shall not be applicable to any vehicle which is a part of an interstate fleet registered and licensed under the provisions of section 53-114, nor to any vehicle covered by a valid and existing reciprocal agreement or declaration entered into under the provisions of this act.

History: En. Sec. 7, Ch. 121, L. 1929; amd. Sec. 7, Ch. 126, L. 1933; amd. Sec. 1, Ch. 93, L. 1939; amd. Sec. 1, Ch. 296, L. 1947; amd. Sec. 3, Ch. 195, L. 1953; amd. Sec. 1, Ch. 143, L. 1955; amd. Sec. 26, Ch. 206, L. 1963.

Amendment

The 1963 amendment deleted former subsections (2) and (3), for text of which see parent volume; and, at the end of the present section, substituted "under the provisions of this act" for "as hereinafter set forth."

CHAPTER 2—USE OF HIGHWAYS BY NONRESIDENT CAR OWNERS—ACCIDENTS—SERVICE OF PROCESS

53-204. Repealed.

Repeal

This section (Sec. 4, Ch. 10, L. 1937; Sec. 10, Ch. 117, L. 1961), relating to

service of process on nonresident motorist, was repealed by Sec. 2, Ch. 189, Laws 1963.

CHAPTER 4—ELIMINATION OF RECKLESS DRIVING—RESPONSIBILITY OF MOTOR VEHICLE OWNERS AND OPERATORS

53-418. Definitions.

References

Schwentner v. White, 199 F Supp 710, 711.

CHAPTER 6—ADDITIONAL FEES OR TAXES ON MOTOR VEHICLES

Section 53-615. Additional fees on trucks, tractors, trailers and semitrailers.

53-638.1. Exemptions of vehicles not capable of operation on highways.

53-642. "Special mobile equipment" defined.

53-615. Additional fees on trucks, tractors, trailers and semitrailers.

In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each motor truck and truck-tractor, based upon the maximum gross loaded weight thereof as set by the licensee in his application, the following fees:

Schedule I:

Up to 6,000 lbs. -----	\$ 6.00
6,001 lbs. or more, and less than 8,000 lbs. -----	10.00
8,001 lbs. or more, and less than 10,000 lbs. -----	14.00
10,001 lbs. or more, and less than 12,000 lbs. -----	16.00
12,001 lbs. or more, and less than 14,000 lbs. -----	18.00
14,001 lbs. or more, and less than 16,000 lbs. -----	22.00
16,001 lbs. or more, and less than 18,000 lbs. -----	30.00
18,001 lbs. or more, and less than 20,000 lbs. -----	40.00
20,001 lbs. or more, and less than 22,000 lbs. -----	50.00
22,001 lbs. or more, and less than 24,000 lbs. -----	75.00
24,001 lbs. or more, and less than 26,000 lbs. -----	100.00
26,001 lbs. or more, and less than 28,000 lbs. -----	125.00
28,001 lbs. or more, and less than 30,000 lbs. -----	165.00
30,001 lbs. or more, and less than 32,000 lbs. -----	210.00
32,001 lbs. or more, and less than 34,000 lbs. -----	255.00
34,001 lbs. or more, and less than 36,000 lbs. -----	300.00
36,001 lbs. or more, and less than 38,000 lbs. -----	345.00
38,001 lbs. or more, and less than 40,000 lbs. -----	390.00
40,001 lbs. or more, and less than 42,000 lbs. -----	435.00

In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each trailer and semitrailer, based upon the maximum gross loaded weight described above, and as set by the licensee in his application except as otherwise provided in this act the following fees:

Schedule II:

Trailers Other Than House Trailers.

Up to 2,500 lbs. for personal use -----	Exempt
Up to 2,500 lbs. for commercial use -----	\$ 3.50
2,501 lbs. or more, and less than 6,000 lbs. -----	4.50
6,001 lbs. or more, and less than 8,000 lbs. -----	12.00
8,001 lbs. or more, and less than 10,000 lbs. -----	14.00
10,001 lbs. or more, and less than 12,000 lbs. -----	16.00
12,001 lbs. or more, and less than 14,000 lbs. -----	18.00
14,001 lbs. or more, and less than 16,000 lbs. -----	22.00
16,001 lbs. or more, and less than 18,000 lbs. -----	30.00
18,001 lbs. or more, and less than 20,000 lbs. -----	40.00
20,001 lbs. or more, and less than 22,000 lbs. -----	50.00

22,001 lbs. or more, and less than 24,000 lbs.	75.00
24,001 lbs. or more, and less than 26,000 lbs.	100.00
26,001 lbs. or more, and less than 28,000 lbs.	125.00
28,001 lbs. or more, and less than 30,000 lbs.	165.00
30,001 lbs. or more, and less than 32,000 lbs.	210.00
32,001 lbs. or more, and less than 34,000 lbs.	255.00
34,001 lbs. or more, and less than 36,000 lbs.	300.00
36,001 lbs. or more, and less than 38,000 lbs.	345.00
38,001 lbs. or more, and less than 40,000 lbs.	390.00
40,001 lbs. or more, and less than 42,000 lbs.	435.00

In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each house trailer, based upon over-all length of body as set by the licensee in his application, except as otherwise provided in this act, a fee equal to fifty cents (50¢) for each foot of over-all trailer body length, exclusive of bumpers and hitch.

Provided, that in addition to the fees provided for in Schedules I and II of this act, for each motor truck, truck-tractor, trailer, or semitrailer hauling loads in excess of forty-two thousand (42,000) pounds and within the weight limits specified in section 32-1123, there shall be collected a fee of fifty dollars (\$50.00) for each two thousand (2,000) pounds, or fraction thereof.

Provided further, on motor trucks, trailers and semitrailers, owned and operated by ranchers or farmers in the transportation of their own ranch, farm, orchard, or dairy products from point of production to market, or of supplies, commodities, or equipment to be used on the ranch, farm, orchard, or dairy, or in the infrequent or seasonal transportation by one farmer for another for any purpose other than commercial hire of products of the farm, orchard or dairy, or of supplies or commodities to be used on the farm, orchard or dairy, except motor trucks owned and operated by co-operative associations or co-operative marketing associations, shall be paid and collected annually a fee equal to twenty per cent (20%) of the fees provided in Schedule I and Schedule II above; provided, however, the minimum fee under Schedule I and Schedule II shall be four dollars (\$4.00). The terms "trailers and semitrailers" as used herein shall not include farm wagons.

Provided further, that there shall be paid and collected annually a fee equal to seventy-five per cent (75%) of the fees provided in Schedule I and Schedule II above on pole trailers; trucks, truck-tractors, trailers and semitrailers used exclusively in hauling livestock, logs, and ready-mix concrete; truck-tractors and low-boy trailers used exclusively in hauling equipment; and truck-tractors drawing or hauling said low-boy trailers.

When the gross weight license fee applied for on any vehicle exceeds twenty-four thousand (24,000) pounds, licenses for motor trucks, trailers, tractors, pole trailers, or semitrailers may be purchased for a three-months' period for one-fourth ($\frac{1}{4}$) the regular fee at the beginning of any quarter of the calendar year. For each fee so paid other than at the time of payment of the basic license fee, an additional fee of one dollar (\$1.00)

shall be charged. The state highway commission is authorized to establish rules and regulations relative to the issuance and display of certificates or insignia, which shall state the quarters for which the vehicle is licensed.

No vehicle licensed under the provisions of this section shall be operated over the public highways unless the owner and/or operator thereof within ten (10) days after the expiration of any such three-month period apply for, and pay the required fee for, a license for an additional three-month period, or for the remainder of the year. Any person who operates any such vehicle upon the public highways after the expiration of said ten (10) days, shall be guilty of a misdemeanor, and in addition shall be required to purchase a gross weight license for the vehicle involved at the fee covering an entire year's license for operation thereof, less the fees for any period or periods of the year already paid. If, within five (5) days thereafter, no license for a full year has been purchased as required aforesaid, the Montana highway patrol, county sheriff or city police shall impound such vehicle in such manner as may be directed for such cases by the supervisor of the Montana highway patrol, until such requirement is met.

Provided further, that there shall be paid and collected annually for each bus or auto stage with the exception of school buses the sum of seven dollars (\$7.00) per seat exclusive of the first seven (7) seats and the operator, for the maximum adult seating capacity thereof; provided further, that motor vehicles which are regularly used to haul freight and passengers shall be taxed upon the basis of the gross weight schedule hereinabove established; provided further, that school buses shall not be exempt if they enter charter service.

History: En. Sec. 1, Ch. 219, L. 1951; amd. Sec. 1, Ch. 139, L. 1953; amd. Sec. 1, Ch. 258, L. 1955; amd. Sec. 1, Ch. 150, L. 1963.

Amendment

The 1963 amendment deleted a proviso reading, "Provided, that in lieu of the additional fee provided in this section there shall be collected a fee of five dollars (\$5.00) on any motor truck, truck-tractor, trailer or semitrailer used only for the purpose of transporting any air compressor, rock crusher, conveyor, hoist, wrecker, donkey engine, cook house, tool house or bunk house attached to or made a part of

such motor truck, trailer or semitrailer"; and, in the present third proviso, substituted "pole trailers; trucks, truck-tractors, trailers and semitrailers used exclusively in hauling livestock, logs, and ready-mix concrete; truck-tractors and low-boy trailers used exclusively in hauling equipment; and truck-tractors drawing or hauling said low-boy trailers" for "motor trucks, trailers and semitrailers, used exclusively in hauling livestock, logs, ready-mix concrete and pole trailers and on 'low-boy trailers,' used exclusively for the hauling of equipment and on tractors permanently attached to such 'low-boy trailers.'"

53-625. Repealed.

Repeal

This section (Sec. 11, Ch. 219, L. 1951; Sec. 1, Ch. 231, L. 1957), relating to re-

ciprocity and fleet registration, was repealed by Sec. 27, Ch. 206, Laws 1963.

53-638.1. Exemptions of vehicles not capable of operation on highways. Track-type tractors, other track mounted machinery and equipment, road rollers, and other similar equipment and machinery which cannot be self-propelled or towed upon the highways of this state and

which must be transported by some type of hauling unit, shall not be subject to any of the terms and provisions of Title 53, R.C.M. 1947.

History: En. Sec. 3, Ch. 150, L. 1963.

Effective Date

Section 4 of Ch. 150, Laws 1963 pro-

vided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

53-642. "Special mobile equipment" defined. "Special mobile equipment" means every vehicle which is not designed and used primarily for the transportation of persons or property on a public highway and which is operated or moved over the highway from construction project to construction project, and not removed from the confines and haul roads thereof, except for movement from construction project to storage yard, from storage yard to construction project, or from storage yard or construction project to point of repair or maintenance and return. Special mobile equipment includes, but is not limited to portable air compressors, air drills, asphalt spreaders, gravel crushing equipment and hot plant equipment, buckets, belt and front-end loaders, track laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving mixers, earth moving scrapers and carry-alls, lighting, generating and power plants, welders, pumps, power shovels and draglines, cranes, crane mounted heel-boom log loaders, fork-lift trucks, lumber carriers, bunk-houses, tool houses, shop cars, oil distributors, scales and scale houses, and conveyors. It also includes self-propelled tractor-drawn earth moving equipment, dump trucks and tractor-dump trailer combinations which, because of excess width, height, length, or unladen weight, cannot be moved over a public highway without a permit as provided in section 32-1127, R.C.M. 1947, and which are operated unladen except within the boundaries of the project limits, as defined by the contract, and adjacent haul roads. However, the term "special mobile equipment" shall not include a vehicle such as a truck, truck-tractor, trailer, semitrailer, house trailer, or house car, designed for the transportation of persons or property.

History: En. Sec. 4, Ch. 183, L. 1955;
amd. Sec. 2, Ch. 150, L. 1963.

Amendment

The 1963 amendment substantially re-wrote this section. For previous version, see parent volume.

CHAPTER 7—RECIPROCITY AND PROPORTIONAL REGISTRATION

- Section 53-701. Declaration of policy.
 53-702. Definitions.
 53-703. Montana motor vehicle reciprocity board creation.
 53-704. Authority of Montana motor vehicle reciprocity board.
 53-705. Authority for reciprocity agreements, provisions, reciprocity standards.
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 53-709. Extension of reciprocal privileges to lessees authorized.
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 53-713. Registration and identification of proportionally registered vehicles, effect of such registration.
 53-714. Proportional registration cannot be in a single jurisdiction.

- 53-715. Registration of additional fleet vehicles.
- 53-716. Withdrawal of fleet vehicles, credits and accounting.
- 53-717. New fleet—estimated mileage.
- 53-718. Fleet registration may be denied.
- 53-719. Preservation of proportional registration records.
- 53-720. Relation to other state laws.
- 53-721. Suspension of reciprocity benefits.
- 53-722. Agreements to be written, filed and available for distribution.
- 53-723. Reciprocity agreements in effect at time of act.
- 53-724. Act part of and supplement to motor vehicle registration law.

53-701. Declaration of policy. It is the policy of this state to promote and encourage the fullest possible use of its highway system by authorizing the making and execution of motor vehicle reciprocal or proportional registration agreements, arrangements and declarations with other states, provinces, territories and countries with respect to vehicles registered in this and such other states, provinces, territories and countries thus contributing to the economic and social development and growth of this state.

History: En. Sec. 1, Ch. 206, L. 1963.

Title of Act

An act relating to motor vehicles; creating, amending and repealing laws on motor vehicle reciprocal or proportional registration agreements, arrangements and declarations with other states, provinces, territories and countries, so as to conform substantially with the model reciprocity and proration draft proposed by the national committee on uniform traffic laws

and ordinances; providing a declaration of policy, definitions, creation of Montana motor vehicle reciprocity board, and authority of said board; and providing other related sections for carrying out the policy, construction and administration of this act; providing a severability clause; amending section 53-129, R.C.M., 1947, as amended; repealing section 53-625, R.C.M., 1947, as amended; providing an effective date.

53-702. Definitions. As used in this act: (1) "Commercial vehicle" means any vehicle which is operated in more than one state and used for the transportation of persons for hire, compensation or profit, or designed or used primarily for the transportation of property.

(2) "Jurisdiction" means and includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country and a state or province of a foreign country.

(3) "Owner" means a person who holds the legal title to a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner shall be deemed to be such person in whom is vested right of possession or control.

(4) "Legal residence," as used in this act only, means a jurisdiction where the person lives or conducts his business. Such residence need not be coupled with the intent to live or conduct the business there on a permanent basis. The use of the word "residence" in this act shall be confined to the definition given, and shall not be confused with the word "domicile." This definition of "residence" further recognizes that a person may have several residences, but only one domicile.

(5) (a) "Properly registered," as applied to place of registration means:

(i) The jurisdiction where the person registering the vehicle has his legal residence, or

(ii) In the case of a commercial vehicle, the jurisdiction in which it is registered if the commercial enterprise in which such vehicle is used has a place of business therein and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated or otherwise controlled in or from such place of business and, the vehicle has been assigned to such place of business, or

(iii) In the case of a commercial vehicle, the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by said jurisdiction.

(b) In case of doubt or dispute as to the proper place of registration of a vehicle, the Montana motor vehicle reciprocity board shall make the final determination, but in making such determination, the Montana motor vehicle reciprocity board may confer with departments of the other jurisdictions affected.

(6) "Fleet" means two (2) or more commercial vehicles.

(7) "Person," for purposes of this act, means every natural person, firm, copartnership, association, or corporation.

(8) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(9) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(10) "Preceding year" means a period of twelve (12) consecutive months fixed by the Montana motor vehicle reciprocity board which period shall be within sixteen (16) months immediately preceding the commencement of the registration or license year for which proportional registration is sought; and the Montana motor vehicle reciprocity board in fixing such period shall make it conform to the terms, conditions and requirements of any applicable agreement or arrangements for the proportional registration of vehicles.

History: En. Sec. 2, Ch. 206, L. 1963.

53-703. Montana motor vehicle reciprocity board creation. (1) There is hereby created for the purpose of administration of this act, the Montana motor vehicle reciprocity board, which shall consist of six (6) members to be appointed by the governor. One of said members shall be the registrar of motor vehicles; one shall be a member of the Montana highway patrol; one shall be a member of the Montana state highway commission; one shall be a member of the state board of equalization; one shall be an attorney from the legal staff of the Montana state highway commission; and one shall be the gross vehicle weight supervisor. In lieu of any above-named member, the governor may instead appoint a

qualified representative from the commission, board or office designated. The members of the board shall meet in Helena, Montana, within two weeks after the effective date of this act. At the said first meeting and annually in December thereafter, the board shall elect a secretary who shall be a member of said board, and the board shall elect a chairman and a vice-chairman from its own membership who shall hold office for one (1) year. Election as chairman and vice-chairman shall not interfere with the member's right to vote on all matters before the board. The board shall meet at such other times as it deems advisable, but at least once every two (2) calendar months, and shall from time to time adopt rules and regulations for the administration of this act as may be deemed necessary.

(2) The board shall act collectively in harmony with recorded resolutions or motions adopted by the majority of the board at regular or special meetings, notice of which meetings shall be given to all members pursuant to the rules of said board. Four (4) members shall constitute a quorum at any meeting; but no resolution, motion, or other decision of the board shall be adopted or passed without the favorable vote of at least four (4) members.

History: En. Sec. 3, Ch. 206, L. 1963.

53-704. Authority of Montana motor vehicle reciprocity board. The Montana motor vehicle reciprocity board shall have the authority to execute or make arrangements, agreements or declarations to carry out the provisions of this act.

History: En. Sec. 4, Ch. 206, L. 1963.

53-705. Authority for reciprocity agreements, provisions, reciprocity standards. The Montana motor vehicle reciprocity board may enter into an agreement or arrangement with the duly authorized representatives of other jurisdictions, granting to vehicles or to owners of vehicles which are properly registered or licensed in such jurisdictions, and for which evidence of compliance is supplied, benefits, privileges and exemptions from payment, wholly or partially, of any taxes, fees, or other charges imposed upon such vehicles or owners with respect to the operation or ownership of such vehicles under the laws of this state. Such an agreement or arrangement shall provide that vehicles properly registered or licensed in this state, when operated upon highways of such other jurisdiction, shall receive exemptions, benefits and privileges of a similar kind or to a similar degree as are extended to vehicles properly registered or licensed in such jurisdiction when operated in this state. Each such agreement or arrangement shall, in the judgment of the Montana motor vehicle reciprocity board, be in the best interest of the state and the citizens thereof and shall be fair and equitable to this state and the citizens thereof, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

History: En. Sec. 5, Ch. 206, L. 1963.

53-706. Base state registration reciprocity. An agreement or arrangement entered into, or a declaration issued under the authority of this act

may contain provisions authorizing the registration or licensing in another jurisdiction of vehicles located in or operated from a base in such other jurisdiction which vehicles otherwise would be required to be registered or licensed in this state; and in such event the exemptions, benefits and privileges extended by such agreement, arrangement or declaration shall apply to such vehicles, when properly licensed or registered in such base jurisdiction.

History: En. Sec. 6, Ch. 206, L. 1963.

53-707. Proportional registration of fleet vehicles. If any jurisdiction permits or requires the licensing of fleets of vehicles in interstate or combined interstate and intrastate commerce and payment of registration fees, license taxes or other fixed fees thereon on an apportionment basis commensurate with and determined by the miles traveled on and the use made of said jurisdiction's highways, as compared with the miles traveled on and the use made of other jurisdiction's highways or any other equitable basis of apportionment, and exempts vehicles registered in other jurisdiction under such apportionment basis from the requirements of full payment of its own registration, license or other fixed fees, then the Montana motor vehicle reciprocity board may, by agreement, adopt such exemption with respect to vehicles of such fleets, whether owned by residents or nonresidents of this state and regardless of where based. Such agreements, under such terms, conditions or restrictions as the Montana motor vehicle reciprocity board deems proper, may provide that owners of vehicles operated in interstate or combined interstate and intrastate commerce in this state shall be permitted to pay registration, license or other fixed fees on an apportionment basis, commensurate with and determined by the miles traveled on and the use made of the highways of this state as compared with the use made of the highways of other jurisdictions or any other equitable basis of apportionment. No such agreement shall authorize, or be construed as authorizing, any vehicle so registered to be operated in intrastate commerce in this state unless the owner thereof has been granted intrastate authority or rights by the Montana railroad and public service commission, if such grant is otherwise required by law. The Montana motor vehicle reciprocity board may adopt and promulgate such rules and regulations as it shall deem necessary to effectuate and administer the provisions of this subsection, and the registration of fleet vehicles under this act shall be subject to the rights, terms and conditions granted by or contained in any applicable agreement, arrangement or declaration made by the Montana motor vehicle reciprocity board.

History: En. Sec. 7, Ch. 206, L. 1963.

53-708. Declarations of extent of reciprocity. In the absence of an agreement or arrangement with another jurisdiction, the Montana motor vehicle reciprocity board may examine the laws and requirements of such jurisdiction and declare the extent and nature of exemptions, benefits and privileges to be extended to vehicles properly registered or licensed in such other jurisdiction, or to the owners of such vehicles, which shall, in

the judgment of the Montana motor vehicle reciprocity board, be in the best interest of this state and the citizens thereof, which shall be fair and equitable to this state and the citizens thereof, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

History: En. Sec. 8, Ch. 206, L. 1963.

53-709. Extension of reciprocal privileges to lessees authorized. An agreement or arrangement entered into, or a declaration issued under the authority of this act, may contain provisions under which a leased vehicle properly registered by the lessor thereof may be entitled, subject to terms and conditions stated therein, to the exemptions, benefits and privileges extended by such agreement, arrangement or declaration.

History: En. Sec. 9, Ch. 206, L. 1963.

53-710. Automatic reciprocity. On and after the effective date of this act, if no agreement, arrangement or declaration is in effect with respect to another jurisdiction as authorized by this act, any vehicle properly registered or licensed in such other jurisdiction, and for which evidence of compliance is supplied, shall receive, when operated in this state, the same exemptions, benefits and privileges granted by such other jurisdictions to vehicles properly registered in this state. Reciprocity extended under this subsection shall apply to commercial vehicles only when engaged exclusively in interstate commerce.

History: En. Sec. 10, Ch. 206, L. 1963.

53-711. Proportional registration not exclusive. Nothing contained in this act relating to proportional registration of fleet vehicles shall be construed as requiring any vehicle to be proportionally registered if it is otherwise registered in this state for the operation in which it is engaged, including but not by way of limitation, regular registration, temporary registration, or trip permit or registration.

History: En. Sec. 11, Ch. 206, L. 1963.

53-712. Proportional registration of fleet vehicles, application, fee-formula and payment. (1) Any owner engaged in operating one or more fleets may, in lieu of registration of vehicles under other sections of Title 53, register and license each fleet for operation in this state by filing an application with the Montana highway commission which shall contain the following information, and such other information pertinent to vehicle registration as the Montana highway commission may require:

(a) Total fleet miles. This shall be the total number of miles operated in all jurisdictions during the preceding year by the vehicles in such fleet during said year.

(b) In-state miles. This shall be the total number of miles operated in this state during the preceding year by the vehicles in such fleet during said year.

(c) A description and identification of each vehicle of such fleet which is to be operated in this state during the registration year for which proportional fleet registration is requested.

(2) The application for each fleet shall be accompanied by a fee payment computed as follows:

(a) Divide in-state miles by total fleet miles.

(b) Determine the total amount necessary to register each and every vehicle in the fleet for which registration is requested, based on the regular annual registration fees prescribed by section 53-122, R.C.M., 1947, as amended, and section 53-615, R.C.M., 1947, as amended.

(c) Multiply the sum obtained under subsection (2) (b) hereof by the fraction obtained under subsection (2) (a) hereof.

History: En. Sec. 12, Ch. 206, L. 1963.

53-713. Registration and identification of proportionally registered vehicles, effect of such registration. (1) The Montana highway commission shall register the vehicles so described and identified and shall issue a license plate or plates, or a distinctive sticker, or other suitable identification device, for each vehicle described in the application upon payment of the appropriate fees for such application and for the stickers or devices issued. A fee of two dollars (\$2.00) shall be paid for each license plate, sticker or device issued for each proportionally registered vehicle. A registration card shall be issued for each proportionally registered vehicle. Such registration card shall, in addition to other information required by Title 53, bear upon its face the number of the license, sticker or other device issued for such proportionally registered vehicle and shall be carried in such vehicle at all times.

(2) Fleet vehicles so registered and identified shall be deemed fully licensed and registered in this state for any type of movement or operation, except that, in those instances in which a grant of authority is required for intrastate movement or operation, no such vehicle shall be operated in intrastate commerce in this state unless the owner thereof has been granted intrastate authority or rights by the Montana railroad and public service commission and unless said vehicle is being operated in conformity with such authority or rights.

History: En. Sec. 13, Ch. 206, L. 1963.

53-714. Proportional registration cannot be in a single jurisdiction. The right to the privilege and benefits of proportional registration of fleet vehicles extended by this act, or by any contract, agreement, arrangement or declaration made under the authority of this act, shall be subject to the condition that each fleet vehicle proportionally registered under the authority of this act shall also be proportionally or otherwise properly registered in at least one other jurisdiction during the period for which it is proportionally registered in this state.

History: En. Sec. 14, Ch. 206, L. 1963.

53-715. Registration of additional fleet vehicles. Vehicles acquired by the owner after the commencement of the registration year and subsequently added to a proportionally registered fleet shall be proportionally registered by applying the mileage percentage used in the original appli-

cation for such fleet for such registration period to the regular registration fees due with respect to such vehicle for the remainder of the registration year.

History: En. Sec. 15, Ch. 206, L. 1963.

53-716. Withdrawal of fleet vehicles, credits and accounting. If any vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered under the provisions of this act, the owner of such fleet shall so notify the Montana highway commission on appropriate forms to be prescribed by the Montana motor vehicle reciprocity board. The Montana highway commission may require the owner to surrender proportional registration cards and such other identification devices which have been issued with respect to such vehicles as the Montana highway commission may deem advisable. If a vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold or otherwise completely removed from the service of the registrant, the unused portion of the gross vehicle weight fees paid with respect to such vehicle, which shall be a sum equal to the amount paid with respect to such vehicle when it was first proportionally registered in such registration year, reduced by $1/12$ of the total annual gross vehicle weight fee of such vehicle for each calendar month and fraction thereof elapsing between the first day of the month of the current year in which the vehicle was registered and the date the notice of withdrawal is received by the Montana highway commission, shall be credited to the proportional registration account of such owner. Such credit shall be applied against liability for subsequent additions to be prorated during such registration year or for additional fees due upon audit under subsection 19 [53-719] hereof. If any such credit is less than five dollars (\$5.00), no credit shall be made or entered. In no event shall such amount be credited against fees other than those for such registration year, nor shall any such amount be subject to refund.

History: En. Sec. 16, Ch. 206, L. 1963.

53-717. New fleet—estimated mileage. The initial application for proportional registration of a fleet shall state the mileage data with respect to such fleet for the preceding year in this and other jurisdictions. If no operations were conducted with such fleet during the preceding year, the application shall contain a full statement of the proposed method of operation and estimates of annual mileage in this state and other jurisdictions. The Montana highway commission shall determine the in-state and total fleet miles to be used in computing the fee payment for the fleet. The Montana highway commission may evaluate and adjust the estimate in the application if it is not satisfied as to the correctness thereof.

History: En. Sec. 17, Ch. 206, L. 1963.

53-718. Fleet registration may be denied. The Montana highway commission may refuse to accept proportional registration applications for the registration of vehicles based in, or owned by residents of, another jurisdiction if the Montana motor vehicle reciprocity board shall find

that such other jurisdiction does not grant similar registration privileges to fleet vehicles based in or owned by residents of this state.

History: En. Sec. 18, Ch. 206, L. 1963.

53-719. Preservation of proportional registration records. Any owner whose application for proportional registration has been accepted shall preserve the records on which the application is based for a period of four (4) years following the year or period upon which said application is based. Upon request of the Montana highway commission, the owner shall make such records available to the Montana highway commission at its office for audit as to accuracy of computations and payments or to pay the reasonable costs of an audit at the home office of the owner, by a duly appointed representative of the Montana highway commission. The Montana highway commission may make arrangements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of any such owner.

History: En. Sec. 19, Ch. 206, L. 1963.

53-720. Relation to other state laws. The provisions of this act shall constitute complete authority for the registration of fleet vehicles upon a proportional registration basis without reference to or application of any other statutes of this state except as in this section expressly provided.

History: En. Sec. 20, Ch. 206, L. 1963.

53-721. Suspension of reciprocity benefits. Agreements, arrangements or declarations made under the authority of this act may include provisions authorizing the Montana highway commission to suspend or cancel the exemptions, benefits or privileges granted thereunder to a person who violates any of the conditions or terms of such agreements, arrangements or declarations or who violates the laws of this state relating to motor vehicles, or rules and regulations lawfully promulgated thereunder.

History: En. Sec. 21, Ch. 206, L. 1963.

53-722. Agreements to be written, filed and available for distribution. All agreements, arrangements or declarations or amendments thereto shall be in writing and shall be filed in the office of the secretary of the Montana motor vehicle reciprocity board. The secretary of the Montana motor vehicle reciprocity board shall provide copies for public distribution upon request.

History: En. Sec. 22, Ch. 206, L. 1963.

53-723. Reciprocity agreements in effect at time of act. All reciprocity and proportional registration agreements, arrangements and declarations relating to vehicles, in force and effect at the time this act becomes effective, shall continue in force and effect until specifically amended or revoked as provided by law or by such agreements or arrangements.

History: En. Sec. 23, Ch. 206, L. 1963.

53-724. Act part of and supplement to motor vehicle registration law. This act shall be a part of Title 53, R.C.M., 1947, as amended, and supplemental to the motor vehicle registration law of this state.

History: En. Sec. 24, Ch. 206, L. 1963.

Separability Clause

Section 25 of Ch. 206, Laws 1963 read "Severability. If any phrase, clause, subsection or section of this act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be

affected as a result of said part being held unconstitutional or invalid."

Repealing Clause

Section 27 of Ch. 206, Laws 1963 read "Section 53-625, R.C.M., 1947, as amended, is repealed."

Effective Date

Section 28 of Ch. 206, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 7, 1963.

CHAPTER 8—MARKINGS ON TRUCKS AND HEAVY VEHICLES

Section 53-801. Owner's name and certificate number to be displayed on heavy vehicles—specifications.

53-802. Dealers and manufacturers exempt.

53-803. Penalty for violations.

53-801. Owner's name and certificate number to be displayed on heavy vehicles—specifications. No motor vehicle or combination of vehicles, except farm vehicles, having a gross weight of more than 10,000 pounds shall operate upon the highways of the state of Montana unless there shall be displayed on both sides of each vehicle operated under its own power, either alone or in combination, the name, or trade name and address or M.R.C. or I.C.C. certificate number of the person or corporation under whose jurisdiction the vehicle, or vehicles, is or are being operated.

The display of name must be in letters in sharp contrast to the background and size, shape, and color readily legible in daylight from a distance of fifty (50) feet while the vehicle is not in motion, and such display shall be kept and maintained in such manner as to remain so legible. The display may be accomplished either by painting the information on the vehicle or through the use of a decal or a removable device, so prepared as to otherwise meet the identification and legibility requirements of this act.

History: En. Sec. 1, Ch. 133, L. 1963.

Title of Act

An act to provide for the marking of

motor vehicles operating on the highways of the state of Montana, providing a penalty and providing an effective date.

53-802. Dealers and manufacturers exempt. This act shall not apply to motor vehicles being transported to dealers, from point of manufacture, or from one dealer to another, or when being demonstrated to a prospect, or delivered to a buyer from a dealer or a manufacturer.

History: En. Sec. 2, Ch. 133, L. 1963.

53-803. Penalty for violations. Any person convicted of violating this act shall be guilty of a misdemeanor and shall be punished for each offense by a fine of not more than one hundred dollars (\$100) or by imprisonment for not more than one (1) month, or both.

History: En. Sec. 3, Ch. 133, L. 1963.

Effective Date

Section 4 of Ch. 133 read "The effective date of this act is July 1, 1963."

TITLE 55—NEGOTIABLE INSTRUMENTS

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

55-101 to 55-1801. (8401 to 8493, 8495 to 8597) Repealed.

Repeal

These sections (Sec. 4240, Civ. C. 1895; Secs. 5842 to 5934, 5936 to 6037a, Rev. C. 1907; Secs. 8401 to 8493, 8495 to 8597,

R.C.M. 1921), the Uniform Negotiable Instruments Law, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

REVISED CODES
OF
MONTANA

VOLUME 4

Part 1

1963 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 4 (PART 1) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 4
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NEW LAWS IN VOLUME 4 (Part 1)

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TITLE 56—NOTARIES AND COMMISSIONERS OF DEEDS

CHAPTER 1—NOTARIES PUBLIC

56-107. (391) Repealed.

Repeal

This section (Sec. 914, Pol. C. 1895), relating to protests of bills or notes, was

repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

TITLE 57—NUISANCES

CHAPTER 1—NUISANCES PUBLIC AND PRIVATE—REMEDIES

57-101. (8642) Nuisance defined.

Sale of Milk at Less than Minimum Price

A sale of milk at a price less than the minimum prescribed by the Montana milk control board under section 27-407, was a

nuisance, being an activity which was injurious to health. *Montana Milk Control Board v. Rehberg*, — M —, 376 P 2d 508, 517.

57-102. (8643) Public nuisance.

References

Cited in *Montana Milk Control Board v. Rehberg*, — M —, 376 P 2d 508, 517.

TITLE 58—OBLIGATIONS

CHAPTER 2—JOINT AND SEVERAL, CONDITIONAL AND ALTERNATE OBLIGATIONS

58-210. (7406) When performance, etc., excused.

References

Laughnan v. Sorenson, — M —, 366 P 2d 433, 435.

CHAPTER 3—TRANSFER OF OBLIGATIONS

58-303. (7415) Nonnegotiable instrument may be transferred.

Chattel Mortgage

The assignee of a chattel mortgage given by the buyer of an automobile took the mortgage subject to the buyer's de-

fenses and equities which existed at the time of the assignment of the instrument. Sonnek v. Universal C. I. T. Credit Corp., — M —, 374 P 2d 105, 108.

CHAPTER 5—EXTINCTION OF OBLIGATIONS BY ACCORD AND SATISFACTION, NOVATION AND RELEASE

58-509. (7464) Obligation extinguished by release.

Avoidance

Where plaintiff, in his reply, alleged that the release pleaded by defendant's answer was procured through fraud, raising an issue of fact concerning a voidable release, whether or not there was sufficient fraud to avoid the release was a question for the jury to determine under

proper instruction. Westfall v. Motors Ins. Corp., — M —, 374 P 2d 96, 99.

Rescission

A release, being a contract, is subject to rescission for the same reasons as other contracts, including fraud or mistake of fact. Westfall v. Motors Ins. Corp., — M —, 374 P 2d 96, 98, 99.

TITLE 59—OFFICES AND OFFICERS

- Chapter 5. Prohibitions and general provisions applicable to public officers, 59-516, 59-516.1, 59-538.
8. Mileage of public officers, 59-801, 59-802.
11. Federal Social Security Act—coverage of certain officers and employees, 59-1103.1, 59-1104, 59-1105.

CHAPTER 5—PROHIBITIONS AND GENERAL PROVISIONS APPLICABLE TO PUBLIC OFFICERS

- Section 59-516. Certain records to be destroyed after twenty-five years.
- 59-516.1. Security agreements.
- 59-538. Expenses of persons in state service—per diem allowance.

59-516. (455.4) Certain records to be destroyed after twenty-five years.
Any claim, warrant, voucher, bond or treasurer's general receipt may be destroyed by any county, city or town officer after a period of twenty-five years.

History: En. Sec. 4, Ch. 92, L. 1935; amd. Sec. 12, Ch. 189, L. 1953; amd. Sec. 1, Ch. 90, L. 1963.

"Under no circumstances shall any claim, warrant, voucher, bond or treasurer's general receipt be destroyed by any county, city or town officer."

Amendment

The 1963 amendment completely rewrote this section, which formerly read:

59-516.1. Security agreements. Termination statements filed under the Uniform Commercial Code—Secured Transactions shall be retained by the filing officer for a period of eight (8) years after receipt, after which they may be destroyed. Financing statements, continuation statements, statements of assignment, and statements of release, the filing of which is authorized by the Uniform Commercial Code—Secured Transactions and as to which no termination statement has been filed, shall be retained by the filing officer for a period of eight (8) years after lapse of the original financing statement or of the latest continuation statement, whichever is later. At the expiration of such period all such statements may be destroyed. [Effective January 1, 1965.]

History: En. 59-516.1 by Sec. 11-144, Ch. 264, L. 1963.

59-538. Expenses of persons in state service—per diem allowance.
Every person engaged in any service in every department of state, inclusive of persons in appointive positions, or positions created by law, whose duties consist of full or partial time in traveling to perform any service for the state under monthly or yearly salary, or who may be sent by any authorized executive of any department of the state upon a mission in performance of any clerical work, supervisory or extension work or otherwise, of every kind and character, shall be allowed, for the time engaged in such travel, ten dollars (\$10) per day for such travel within the state

of Montana and sixteen dollars (\$16) per day for such travel outside the state of Montana; provided, that the provisions of this act shall not apply to persons holding offices specifically provided for in section 93-305, or section 93-313; provided that nothing herein contained shall be construed as affecting the validity of section 43-310; and provided further that the provisions of this act shall not apply to the elective state public officers of the state of Montana who shall in lieu thereof be authorized actual and necessary expenses while engaged in state service away from Helena, not to exceed fifteen dollars (\$15) per day.

History: En. Sec. 2, Ch. 66, L. 1955; amd. Sec. 1, Ch. 207, L. 1957; amd. Sec. 1, Ch. 108, L. 1961; amd. Sec. 1, Ch. 116, L. 1963.

Amendment

The 1963 amendment increased per diem allowance within the state from \$8 to \$10 and per diem allowance without the state from \$11 to \$16.

CHAPTER 8—MILEAGE OF PUBLIC OFFICERS

Section 59-801. Mileage of all officers.

59-802. Same—liability of approving board for exceeding authorized amount.

59-801. (4884) Mileage of all officers. Members of the legislative assembly, state officers, township officers, jurors, witnesses, county agents, and all other persons, except sheriffs, who may be entitled to mileage, when using their own automobiles or airplanes in the performance of official duties, shall be entitled to collect mileage at a rate of eight cents (8¢) per mile for the distance actually traveled by automobile, and at the rate of twelve cents (12¢) per air mile for the distance actually traveled by airplane, and no more unless otherwise specifically provided by law; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310.

History: En. Sec. 4590, Pol. C. 1895; re-en. Sec. 3111, Rev. C. 1907; re-en. Sec. 4884, R. C. M. 1921; amd. Sec. 1, Ch. 16, L. 1933; amd. Sec. 1, Ch. 121, L. 1941; amd. Sec. 1, Ch. 201, L. 1947; amd. Sec. 1, Ch. 93, L. 1949; amd. Sec. 1, Ch. 124, L. 1951; amd. Sec. 1, Ch. 106, L. 1961; amd. Sec. 1, Ch. 123, L. 1963.

Amendment

The 1963 amendment inserted "or airplanes" following "when using their own automobiles"; and inserted "by automobile, and at the rate of twelve cents (12¢) per air mile for the distance actually traveled by airplane."

59-802. (4884.1) Same—liability of approving board for exceeding authorized amount. Whenever it shall be necessary for any state or county officer or employee to use his own automobile or airplane in the performance of any official duty where traveling expense is allowed by law, such officer or employee, except sheriffs, shall receive eight cents (8¢) per mile for each mile necessarily traveled by automobile and twelve cents (12¢) per air mile for each mile necessarily traveled by airplane unless otherwise specifically provided by law and the members of any lawful approving board shall be liable upon their official bonds, for any claim which they may allow in excess of such amount; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310.

History: En. Sec. 1, Ch. 80, L. 1923; amd. Sec. 3, Ch. 16, L. 1933; amd. Sec. 2, Ch. 121, L. 1941; amd. Sec. 2, Ch. 201, L. 1947; amd. Sec. 2, Ch. 93, L. 1949; amd.

Sec. 2, Ch. 124, L. 1951; amd. Sec. 2, Ch. 106, L. 1961; amd. Sec. 2, Ch. 123, L. 1963.

Amendment

The 1963 amendment inserted "or airplane" following "to use his own automobile"; inserted "by automobile and

twelve cents (12¢) per air mile for each mile necessarily traveled by airplane"; and deleted a concluding sentence which read: "Provided, further, that in no case shall an automobile be used as herein provided if suitable transportation can be had by railroad or bus."

CHAPTER 11—FEDERAL SOCIAL SECURITY ACT—COVERAGE OF CERTAIN OFFICERS AND EMPLOYEES

Section 59-1103.1. Contributions by state employees.

59-1104. Plans for coverage of employees of political subdivisions.

59-1105. Contribution account.

59-1103.1. Contributions by state employees. (a) Every employee of the state whose services are covered by an agreement entered into under section 59-1103 shall be required to pay for the period of such coverage, contributions, with respect to wages (as defined in section 59-1102), equal to the amount of employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the state, or his entry upon such service, after the enactment of this act.

(b) and (c). * * * [Same as parent volume.] ✓

History: En. as Sec. 5, Ch. 44, L. 1953 by Sec. 5, Ch. 270, L. 1955; amd. Sec. 198, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the phrase "into the contribution fund established by section 59-1105" after "of such coverage" in the first sentence in subd. (a).

59-1104. Plans for coverage of employees of political subdivisions.

(a) and (b). * * * [Same as parent volume.] ✓

(c)(1) Each political subdivision as to which a plan has been approved under this section shall pay with respect to wages (as defined in section 59-1102), at such time or times as the state agency may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the state agency under section 59-1102.1.

(2) Each political subdivision required to make payment under paragraph (1) of this subsection shall, in consideration of the employee's retention in, or entry upon, employment after enactment of this act, impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages (as defined in section 59-1102), not exceeding the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act, and to deduct the amount of such contributions from his wages as and when paid. Contributions so collected shall partially discharge the liability of such political subdivision or instrumentality under paragraph (1) of this subsection. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(d). * * * [Same as parent volume.] ✓

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963.

fund" after "shall pay"; and, in the second sentence in subd. (c)(2), substituted "shall partially discharge the liability" for "shall be paid into the contribution fund in partial discharge of the liability."

Amendment

The 1963 amendment, in subd. (c)(1), deleted the phrase "into the contribution

59-1105. Contribution account. (a) There is hereby established, in place of the fund known as the contribution fund, a contribution account in the agency fund. Such account shall consist of and there shall be deposited in such account: (1) all contributions, interest and penalties collected under sections 59-1103.1 and 59-1104; (2) all moneys appropriated thereto by the legislative assembly of the state of Montana; (3) any property or securities and earnings thereof acquired through the use of moneys belonging to the account; (4) interest earned upon any moneys in the account; and (5) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the account and all other moneys received for the account from any other source. All moneys in the account shall be mingled and undivided. Subject to the provisions of this act, the state agency is vested with full power, authority and jurisdiction over the account, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this act.

(b) The contribution account shall be used and administered exclusively for the purpose of this act. Withdrawals from such account shall be made for, and solely for (A) payment of amounts required to be paid to the secretary of the treasury of the United States pursuant to an agreement entered into under section 59-1103; (B) payment of refunds provided for in section 59-1103.1; and (C) refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

(c) From the contribution account the custodian of the account shall pay to the secretary of the treasury of the United States such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under section 59-1102.1 and the Social Security Act.

(d) The treasurer of the state shall pay all warrants drawn upon the state agency in accordance with the provisions of this section and with such regulations as the state agency may prescribe pursuant thereto.

(e) Each department of the state shall include in its operating budget for the next succeeding fiscal year, prepared and delivered to the controller in accordance with the provisions of law, an estimate of the amount which it will be required to contribute to the contribution account.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963.

tion fund, a contribution account in the agency fund" for "a special fund to be known as the contribution fund" in the first sentence of subsection (a); substituted "account" for "fund" in thirteen places throughout the section; deleted the words "shall be established and held separate and apart from any other funds or

Amendment

The 1963 amendment substituted "in place of the fund known as the contribu-

moneys of the state and" which preceded "shall be used" in the first sentence of subsection (b); deleted the words "shall be ex officio treasurer and custodian of the contribution fund and shall administer such fund in accordance with the provi-

sions of this act and the directions of the state agency and" which followed "The treasurer of the state" at the beginning of subsection (d); and substituted "the state agency" for "it" after "warrants drawn upon" in subsection (d).

TITLE 60—OIL AND GAS

Chapter 1. Conservation of oil and gas—commission, 60-145, 60-147.

CHAPTER 1—CONSERVATION OF OIL AND GAS—COMMISSION

Section 60-145. Privilege and license tax, quarterly statements, penalties—drilling permit fees—oil and gas conservation moneys.
60-147. Transfer of jurisdiction and record.

60-139. Repealed.

Repeal

This section (Sec. 16, Ch. 238, L. 1953), relating to property and records of the

former oil conservation board and of the board of railroad commissioners, was repealed by Sec. 242, Ch. 147, Laws 1939.

60-145. Privilege and license tax, quarterly statements, penalties—drilling permit fees—oil and gas conservation moneys. A to C. * * *
[Same as parent volume.] ✓

D. All money collected under the provisions of this act shall be deposited in the earmarked revenue fund by the state treasurer of the state of Montana, and shall be used for the purpose of paying all expenses of said commission and for no other purpose; all such moneys shall be used by said commission subject to the approval of the controller and biennial appropriations by the legislative assembly. Upon the termination of said commission any such money remaining shall be paid over to the general fund of the state. All accounts and expenditures of said commission shall be certified by the commission, approved as provided by law, and paid by the state treasurer.

E. The commission may appoint a secretary and employ such other persons as experts, assistants, clerks, and stenographers, as may be deemed necessary to perform the duties that may be required of it, and fix their compensation; provided, however, that the total expenditures of such commission shall not exceed in the aggregate during any fiscal year, the amount actually collected under the provisions of subsection A. of this section, above, plus any amount appropriated for that purpose. The members of the commission shall be allowed their several expenses incurred in the discharge of their duties, as is elsewhere provided in this act.

History: En. Sec. 22, Ch. 238, L. 1953; amd. Sec. 1, Ch. 234, L. 1955; amd. Sec. 1, Ch. 198, L. 1957; amd. Sec. 1, Ch. 47, L. 1961; amd. Sec. 160, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund" in the first sentence of subsection D for "a special fund to be known as the 'Oil and Gas Conservation Fund'"; deleted the words "the fund to be raised" which preceded "shall be used for the purpose" in the first sen-

tence of subsection D; substituted "such moneys" for "moneys from this fund" in the final clause of the first sentence of subsection D; substituted "such money remaining" for "balance remaining in said fund" in the second sentence of subsection D; deleted the words "upon warrants drawn by the state auditor out of the oil and gas conservation fund" from the end of subsection D; and deleted the words "or otherwise accruing to said fund" from the end of the first sentence of subsection E.

60-147. Transfer of jurisdiction and record. On or before the effective date, as hereinafter provided, all jurisdiction, control, supervision, custody, property and records of the said station shall be and become transferred from the jurisdiction of the bureau to the commission, and the said commission shall, after the effective date hereinafter provided, assume the said jurisdiction, control, supervision and custody of all property, real and personal, and records located at or pertaining to the said station; that the property so transferred shall be and become the property of the commission; that the operation and maintenance of the said station shall be done and performed by the commission from and after the said effective date hereinafter provided, and the necessary expenditures therefor shall be paid from oil and gas conservation commission moneys, in the earmarked revenue fund upon proper vouchers, by the state treasurer; that the said transfer of property, real, personal, or mixed, and the records from the bureau to the commission shall be made without lien, encumbrance, or obligation of any sort, upon said property and records, and it is the express intention hereby to transfer said property and records to the commission free and clear.

History: En. Sec. 2, Ch. 32, L. 1957;
amd. Sec. 161, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "oil and gas conservation commission moneys, in the earmarked revenue fund" for "oil and gas conservation commission fund."

TITLE 61—PARENT AND CHILD

Chapter 2. Adoption, 61-211.

CHAPTER 2—ADOPTION

Section 61-211. Interlocutory and final decree.

61-211. Interlocutory and final decree. Upon examination of the report described in section 61-209, if such report has been deemed necessary by said court, and after hearing, the court may issue an interlocutory decree giving the care and custody to the petitioners pending the further order of the court.

When a petition has been filed seeking the adoption of a child, the court must cause service of process to be made on the parent or parents of the child, except in those cases hereinafter provided, in the following manner:

The court shall order a citation to issue to the parent or parents in the name of the state of Montana and under the seal of the court, directing such parent or parents to appear in court at a time to be fixed by the court, and show cause why said petition should not be granted. Such citation, together with a copy of the petition for adoption, shall be personally served upon such parent or parents. If, however, any such parent or parents cannot be found within this state, service may be had by publication of a copy of said citation in the manner provided for the publication of summons by Rule 4, M.R.Civ.P. If after completion of such service, any parent so served does not appear, the court may act upon the petition, and the order of the court thereon shall be binding upon all persons so served; provided that any such person shall have the right to appeal from the order in the manner and form provided for appeals from a judgment in civil actions.

The petitioners and the child shall appear at said hearing, unless the presence of the child is waived by the court.

Service of process, as aforesaid, need not be made on a parent who has consented in writing to an adoption; or on the father of an illegitimate child; or on any parent whose consent to adoption is not required under the provisions of section 61-205; and service of process shall not be made on any parent who has relinquished his child to the state department of public welfare or an adoption agency licensed by the state department of public welfare.

After an interlocutory decree, as aforesaid, has been issued by the court, the investigator, if any, shall observe the child in his adoptive home and report in writing to the court within six (6) months on any circumstances or conditions which may have a bearing on the adoption. After six (6) months from the date of the interlocutory decree, the petitioners may apply to the court for a final decree of adoption. The court shall thereupon set a time and place for final hearing. Notice of the time

and date of the hearing shall be served on the state department of public welfare, and the investigator, if any. The investigator, if any, shall file with the court a written report of his findings and recommendations and certify that the described investigation, if any, has been made since the granting of the interlocutory decree. After hearing on said application, at which the petitioners and the child shall appear, unless the presence of the child is waived by the court, the court may enter a final decree of adoption if satisfied that the adoption is for the best interests of the child. If the adoption is denied, an appropriate order shall be made as to the future custody of said child.

History: En. Sec. 11, Ch. 240, L. 1957; amd. Sec. 4, Ch. 199, L. 1961; amd. Sec. 1, Ch. 2, L. 1963.

Amendment

The 1963 amendment corrected a typographical error in the first paragraph and,

in the third paragraph, substituted the reference to Rule 4 of the Montana Rules of Civil Procedure for a reference to former section 93-3014.

TITLE 62—PARKS AND PUBLIC RECREATION

Chapter 3. State parks, 62-305.

CHAPTER 3—STATE PARKS

Section 62-305. Disposal of fees and charges.

62-305. Disposal of fees and charges. The commission shall have power to levy and collect reasonable fees or other charges for the use of such privileges and conveniences as may be provided, and to grant such concessions as it may deem advisable. All moneys derived from the activities of the commission, except from conditional gifts, donations, bequests and endowments, shall be deposited in the state treasury to the credit of the general fund. Moneys derived from conditional gifts, donations, bequests and endowments may be deposited in the federal and private revenue fund.

History: En. Sec. 5, Ch. 48, L. 1939; amd. Sec. 26, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "except from conditional gifts" for "and from unconditional gifts" near the beginning of

the second sentence; substituted "the general fund" at the end of the second sentence for "the state park fund, which fund is hereby created, and shall constitute a continuing fund to be used and expended by the commission for any of the purposes of this act"; and added the third sentence.

TITLE 64—PERSONS AND PERSONAL RIGHTS

Chapter 1. Persons, minors, adults and those of unsound mind, 64-106.1.

CHAPTER 1—PERSONS, MINORS, ADULTS AND THOSE OF UNSOOUND MIND

Section 64-106.1. Capacity of minors to borrow money for education.

64-106.1. Capacity of minors to borrow money for education. Any person who, being a minor, contracts to borrow money to defray the expenses of attending any college or university or other institution of higher education beyond high school, shall have full legal capacity to act in his own behalf and shall have all the rights, powers and privileges and be subject to the obligations of persons of full age with respect to any such contracts.

History: En. Sec. 1, Ch. 34, L. 1963.

Title of Act

An act to establish legal capacity and

obligation of minors in contracting to borrow money to finance education beyond high school.

TITLE 65—PLEDGES AND TRUST RECEIPTS

Chapter 2. Uniform Trust Receipts Act, Repealed—Section 10-102, Chapter 264, Laws of 1963.

CHAPTER 1—PLEDGE

65-104. (8295) Repealed.

Repeal was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.
This section (Sec. 3893, Civ. C. 1895), relating to increase of property pledged,

65-107. (8298) Repealed.

Repeal was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.
This section (Sec. 3896, Civ. C. 1895), relating to the pledge of loaned property,

65-115 to 65-126. (8306 to 8317) Repealed.

Repeal rights and duties of pledgees, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.
These sections (Secs. 3904 to 3915, Civ. C. 1895; Secs. 5788 to 5799, Rev. C. 1907; Sec. 1, Ch. 102, L. 1941), relating to the

CHAPTER 2—UNIFORM TRUST RECEIPTS ACT

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

65-201 to 65-219. Repealed.

Repeal Uniform Trust Receipts Act, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.
These sections (Secs. 1 to 19, Ch. 147, L. 1945; Sec. 13, Ch. 117, L. 1961), the

TITLE 66—PROFESSIONS AND OCCUPATIONS

- Chapter 1. Architecture—regulation of practice, 66-108, 66-109.
2. Auctioneers and auction sales, 66-202, 66-203.1, 66-204.
4. Barbers and barber shops, 66-407, 66-408.
5. Chiropractic—regulation of practice, 66-513.
6. Chiropody—regulation of practice, 66-603, 66-607, 66-608.
8. Cosmetology (beauty shops) regulation, 66-809, 66-815.
9. Dentistry—regulation of practice, 66-904, 66-906, 66-909, 66-919, 66-925.
10. Medicine—regulation of practice, 66-1008, 66-1009.
12. Nursing—regulation of practice, 66-1228, 66-1234, 66-1236, 66-1237.
13. Optometry—regulation, 66-1307, 66-1311, 66-1314.
14. Osteopathy—regulation of practice, 66-1405, 66-1410.
15. Pharmacy—regulation of sale of drugs and medicines, 66-1527.
18. Public accountants—regulation, 66-1812.
19. Real Estate License Act, 66-1924 to 66-1946.
21. Title abstracters—regulation, 66-2104, 66-2106.
22. Veterinary medicine—regulation of practice, 66-2203, 66-2204.
23. Engineers and land surveyors, 66-2333.
24. Plumbers, 66-2403, 66-2407.
25. Physical Therapists Practice Act, 66-2503.
26. Water Well Contractor's License Act, 66-2604 to 66-2606, 66-2615.
27. Morticians and funeral directors, 66-2701 to 66-2717.

CHAPTER 1—ARCHITECTURE—REGULATION OF PRACTICE

- Section 66-108. Fees payable by applicants for examination—disposition of fees.
66-109. Compensation of members of board—disposition and use of funds—annual report.

66-108. (3236) Fees payable by applicants for examination—disposition of fees. Applicants for examination shall pay in advance to the secretary of said board a fee of fifteen dollars. Any applicant failing to pass the said examination shall be entitled to a second examination within one year without fee.

The money received from said applicant shall be turned over to the state treasurer of the state of Montana, and shall be deposited by him in the earmarked revenue fund for the use of the board of architectural examiners.

History: En. Sec. 8, Ch. 158, L. 1917; re-en. Sec. 3236, R. C. M. 1921; amd. Sec. 140, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words "which fee shall defray the entire expense of such candidate, before the aforesaid

board of architectural examiners" from the end of the first sentence of the first paragraph; and substituted "earmarked revenue fund for the use of the board of architectural examiners" for "architectural board fund as herein provided" at the end of the section.

66-109. (3237) Compensation of members of board—disposition and use of funds—annual report. Each member of the examining board is hereby allowed the sum of five (dollars) (\$5.00) per day and mileage at the rate of ten cents (10¢) per mile while in the discharge of his actual duties.

And all fees and moneys received for licenses from practicing architects shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the board of architectural examiners.

The members of the said board shall report annually to the governor on the first Monday of January of each year, which report must show all the transactions of the board, giving the number and names of all applicants, and the number and names of those rejected, and those to whom certificates have been issued, the expenses, the fees and mileage paid, and the amount of money received.

History: En. Sec. 9, Ch. 158, L. 1917; re-en. Sec. 3237, R. C. M. 1921; amd. Sec. 141, Ch. 147, L. 1963.

Amendment

The 1963 amendment made numerous changes in this section. For section prior to amendment, see parent volume.

CHAPTER 2—AUCTIONEERS AND AUCTION SALES

Section 66-202. Auctioneer's authority from the bidder.
66-203.1. Reciprocal privileges to nonresident auctioneers.
66-204. The bond—sureties, approval and filing.

66-202. (7977) Auctioneer's authority from the bidder. An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of the contract, as prescribed in section 66-219. [Effective January 1, 1965.]

History: En. Sec. 3161, Civ. C. 1895; re-en. Sec. 5462, Rev. C. 1907; re-en. Sec. 7977, R. C. M. 1921; amd. Sec. 11-145, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2363. Field Civ. C. Sec. 1265.

Amendment

The 1963 amendment substituted the reference to section 66-219 at the end of the section for "the chapters on sale."

66-203.1. Reciprocal privileges to nonresident auctioneers. The citizenship requirements required by the state of Montana for an auctioneer are hereby waived for the citizens of any state or states to the same extent that the home state of the applicant waives such citizenship requirements for the citizens of the state of Montana.

History: En. Sec. 1, Ch. 173, L. 1963.

Title of Act

An act to provide for reciprocal agree-

ments with other states waiving citizenship requirements for auctioneers and providing for the place of posting bond by nonresident auctioneers.

66-204. (4148) The bond—sureties, approval and filing. The bond must be conditioned to be paid to the state of Montana, with one or more sureties, in the sum of five thousand dollars, and approved by the county clerk of the county in which the auctioneer resides, and filed in his office; or if the auctioneer is not a resident of Montana, said bond shall be filed with the county clerk of the county of this state in which he carries on his principal auction business.

History: En. Sec. 3401, Pol. C. 1895; re-en. Sec. 2120, Rev. C. 1907; re-en. Sec. 4148, R. C. M. 1921; amd. Sec. 2, Ch. 173, L. 1963. Cal. Pol. C. Sec. 3285.

Amendment

The 1963 amendment added the clause

following the semicolon and pertaining to nonresident auctioneers.

Repealing Clause

Section 3 of Ch. 173, Laws 1963 repealed all acts and parts of acts in conflict therewith.

CHAPTER 4—BARBERS AND BARBER SHOPS

Section 66-407. Officers, official seal, bond.

66-408. Compensation, funds and reports.

66-407. (3228.25) Officers, official seal, bond. The board shall elect a president, secretary and treasurer. It shall adopt and use a common seal for the authentication of its orders and records. The secretary shall keep a record of all proceedings of the board. At least once a month all moneys collected by the board shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the board of barber examiners. The secretary and treasurer shall each furnish a surety bond in the sum of five thousand dollars (\$5,000.00), for the faithful performance of his duties; said bond to be filed with the secretary of state and shall be approved by the governor.

History: En. Sec. 7, Ch. 127, L. 1929; third sentence for a clause appearing at the end of the second sentence and reading, "and shall at least once a month turn over to the treasurer of the board all moneys collected."

Amendment

The 1963 amendment substituted the

66-408. (3228.26) Compensation, funds and reports. Each member of the board shall receive a compensation of fifteen dollars (\$15.00) per day while attending board meetings together with legitimate and necessary expenses incurred in attending the meeting of said board.

The board shall make an annual report of its proceedings and moneys expended by it to the governor of the state for the year ending on the 31st day of December preceding the making of said report.

History: En. Sec. 8, Ch. 127, L. 1929; of barber examiners shall be self-sustaining financially and no funds of the state shall be paid for the operation and maintenance of said board. The disbursements of said board shall be paid upon the warrant of the president and secretary."

Amendment

The 1963 amendment deleted a former second paragraph which read: "The board

CHAPTER 5—CHIROPRACTIC—REGULATION OF PRACTICE

Section 66-513. Disposition of fees—receipts and disbursements—per diem and mileage.

66-513. (3150) Disposition of fees—receipts and disbursements—per diem and mileage. All examinations and renewal fees received by the state board of chiropractic examiners under this act shall be paid to the secretary-treasurer of said board, who shall at the end of each month deposit the same with the state treasurer, and the said state treasurer shall place said money so received in the earmarked revenue fund for the use of the state board of chiropractic examiners.

The secretary-treasurer shall keep a true and accurate account of all funds received and all vouchers issued by the board; and on the first day of December of each year he shall file with the governor of the state a report of all receipts and disbursements and the proceedings of said board for the fiscal year.

The members of said board shall receive a per diem of twenty-five dollars (\$25.00) for each day during which they shall be actually en-

gaged in the discharge of their duties, and mileage at the rate of ten cents (10¢) per mile for each mile necessarily traveled in going to and from any meeting of said board.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3150, R. C. M. 1921; amd. Sec. 4, Ch. 188, L. 1961; amd. Sec. 142, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund for the use of the state board of chiropractic examiners" for "a special fund of the state board of chiropractic examiners and shall pay the same out in warrants drawn by the auditor of the state thereof, upon vouchers issued and signed by the president and the sec-

retary-treasurer of said board" at the end of the first sentence of the first paragraph; deleted from the first paragraph a second sentence which read: "Said money so received and placed in said fund may be used by the state board of chiropractic examiners in defraying their expenses in carrying out the provisions of this act"; and deleted a former fourth paragraph which read: "Such per diem and mileage and such other incidental expenses necessarily connected with said board shall be paid out of the fund of the state board of chiropractic examiners, and not otherwise."

CHAPTER 6—CHIROPODY—REGULATION OF PRACTICE

- Section 66-603. Chiroprody examiners—examinations—qualifications—schools—fees—nonresident practitioners.
 66-607. Disposal of moneys collected.
 66-608. Compensation of examiners—expenses.

66-603. (3154.3) Chiroprody examiners—examinations—qualifications—schools—fees—nonresident practitioners. (1). * * * [Same as parent volume.] ✓ See 101

(2) Examinations shall be held semiannually at such places and time as the state board of chiroprody medical examiners shall direct. On and after the date of the taking effect of this act, all persons who may wish to begin practice of chiroprody in this state, shall make application upon a blank form authorized and furnished by said state board of medical examiners, for a license to practice chiroprody. This application shall be granted to such applicants, after they shall have furnished satisfactory proof of being at least twenty-one (21) years of age, of good moral character, of having attained high school graduation or its equivalent and of having had at least two years of instruction in an accredited school of chiroprody recognized as being in good standing by the Montana board of chiroprody medical examiners, but after June 1st, 1941, no school of chiroprody shall be accredited by said board which does not require for graduation four (4) years of instruction in the study of chiroprody. All chiroprodists, actively engaged in the practice of chiroprody one (1) or more years and licensed by the state board of medical examiners, prior to April 1st, 1939, whether meeting these requirements or not, shall, upon furnishing proof thereof to said board of chiroprody medical examiners be entitled to a license without examination. A license without written examination may be issued to chiroprodists of other states maintaining equal statutory requirements for the practice of chiroprody and extending the same reciprocal privilege to this state provided further that they have had a valid license for at least two years in that state prior to filing for reciprocal privilege, and by payment of fifty dollars (\$50.00) to the secretary of the board of medical examiners.

History: En. Sec. 3, Ch. 2, L. 1923; amd. Sec. 3, Ch. 218, L. 1939; amd. Sec. 131, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the secretary of the board of medical examiners" for "board of medical examiners fund" at the end of the section.

66-607. (3154.7) Disposal of moneys collected. All fees and licenses shall be paid to and collected by the secretary of the state board of medical examiners, who shall at least quarterly each year pay the same to the state treasurer, and the state treasurer shall receive and accept such moneys and credit same to the earmarked revenue fund for the use of the state board of medical examiners.

History: En. Sec. 7, Ch. 2, L. 1923; amd. Sec. 130, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund for the use of the state board of medical examiners" for "a

special fund to be known and designated as board of medical examiners fund and such fund shall not be used or expended for any purpose other than as provided for in section 66-1009" at the end of the section.

66-608. (3154.8) Compensation of examiners—expenses. Each member of the board of examiners, except the secretary and the physician members who are otherwise paid for the performance of their duties as medical examiners, shall receive for his services the sum of five dollars (\$5.00) per diem and necessary traveling and incidental expenses, while the secretary shall receive his necessary expenses for services which cannot be performed at the capitol. All printing, postage and other contingent expenses, necessarily incurred, shall be paid by the state board of medical examiners in the same manner as other expenses of the state board of medical examiners.

History: En. Sec. 8, Ch. 2, L. 1923; amd. Sec. 132, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words "out of the funds created by the payment of fees by applicants for licenses" following "receive for his services" in the first sentence; substituted "capitol" for "capi-

tal" at the end of the first sentence; and substituted "by the state board of medical examiners" in the third sentence for "from said funds, and all expenses shall be itemized, verified, audited, upon presentation by the state board of medical examiners, and a warrant drawn therefor by the state auditor on the board of medical examiners fund."

CHAPTER 8—COSMETOLOGY (BEAUTY SHOPS) REGULATION

Section 66-809. Compensation of members of board—deposit of receipts in state treasury.

66-815. Fees.

66-809. (3228.9) Compensation of members of board—deposit of receipts in state treasury. Each member of the board shall receive, as compensation for his or her services, the sum of ten dollars (\$10.00) for each day's actual attendance at board meetings, not to exceed three consecutive days, and each member shall be reimbursed for his or her expenses necessarily incurred in the performance of his or her duties hereunder. All receipts of the board shall be deposited in the state treasury to the credit of the earmarked revenue fund for the use of the state examining

board of cosmetology. The secretary of the state board shall receive an annual salary to be fixed by the board, and his or her necessary expenses actually incurred in the performance of official duties. Such secretary shall not receive, in addition to the salary herein provided, the per diem herein provided for attendance of board meetings. The state board may make reasonable provisions, for its expenses in the enforcement of this act, and for compensation and expenses of examiners.

History: En. Sec. 9, Ch. 104, L. 1929; amd. Sec. 8, Ch. 222, L. 1939; amd. Sec. 135, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the second sentence for a sentence reading, "All such compensation and necessary expenses shall be paid by the board out of

the funds received by it and no part shall be paid by the state"; and deleted from the end of the section a proviso reading, "provided, however, that no payments shall be made by the board except upon a verified claim filed with the board and approved by the majority thereof, and by warrants signed by the president and secretary-treasurer of the board."

66-815. (3228.15) Fees. Each applicant for examination to practice or teach shall pay, at the time of such application a fee of ten (\$10.00) dollars. Each person practicing cosmetology as an operator shall pay a fee of three (\$3.00) dollars for the issuance of a license, and the further fee of three (\$3.00) dollars annually for each renewal thereof. Each applicant for a manager-operator license shall pay a fee of five (\$5.00) dollars, for the issuance of such a license and the further sum of five (\$5.00) dollars annually for each renewal thereof. A manager-operator or teacher of cosmetology who is retired or no longer active in any capacity in a cosmetological establishment or beauty school may obtain an inactive license upon the payment of an annual fee of three (\$3.00) dollars. Every person, firm, copartnership or corporation originally opening a cosmetological establishment shall pay the sum of five (\$5.00) dollars for the issuance of the original license. The sum of three (\$3.00) dollars annually shall be paid by each existing cosmetological establishment and for each renewal of cosmetological establishment license. Each person teaching cosmetology shall pay a fee of five (\$5.00) dollars, for the issuance of a license, and the further sum of five (\$5.00) dollars annually for each renewal thereof. Every person, firm, copartnership, or corporation, owning, operating or conducting a school of cosmetology shall pay the sum of twenty-five (\$25.00) dollars for a certificate of registration therefor, and pay a further sum of twenty-five (\$25.00) dollars annually for each renewal thereof. Each applicant for apprentice license shall pay an annual fee of three (\$3.00) dollars. Each applicant for itinerant license as a cosmetologist, shall pay a fee of twenty-five (\$25.00) dollars. Such license fees shall be paid annually in advance to the secretary of the board. No other or additional license or fee shall be imposed by any municipal corporation or any other political subdivision of the state of Montana for the practice or teaching of cosmetology.

History: En. Sec. 15, Ch. 104, L. 1929; amd. Sec. 12, Ch. 222, L. 1939; amd. Sec. 3, Ch. 80, L. 1941; amd. Sec. 3, Ch. 20, L. 1955; amd. Sec. 2, Ch. 140, L. 1959; amd. [Sec. 1,] Ch. 131, L. 1963.

Amendment

The 1963 amendment inserted the fourth, fifth, and sixth sentences.

CHAPTER 9—DENTISTRY—REGULATION OF PRACTICE

- Section 66-904. Meetings — notice — quorum — funds — bond required of secretary-treasurer — duties — accounts.
- 66-906. Certificate to be registered in counties where practicing — replacing lost certificates — second examination on failure — admission of dentists from other states — reciprocity — annual license fee — inactive fee — due date of annual fee — revocation of license for failure to pay.
- 66-909. Compensation and expenses allowed board members — limitation on duration of examination meetings — employment of counsel to enforce act — secretary-treasurer's compensation.
- 66-919. Practicing dentistry without certificate, penalty for — disposition of fines.
- 66-925. Citation of act — regulatory board.

66-904. (3115.4) Meetings—notice—quorum—funds—bond required of secretary-treasurer—duties—accounts. The board shall meet at least once in each year or oftener at any point in the state of Montana at the call of the president and the secretary-treasurer. Five days' notice must be given by the secretary-treasurer to all board members of the time and place of the meeting of said board. The regular annual meeting of the board shall be held on the second Monday in July of each year. Three members of said board shall constitute a quorum for the transaction of business and its proceedings shall be open to public inspection in all cases of public interest. All moneys received by the board and/or its officers for the board, shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of dental examiners.

The secretary-treasurer shall give bond in such amount as the board may from time to time require, which bond shall be approved by the board, and he shall keep a complete record of all meetings and proceedings of which records the secretary-treasurer shall be custodian, and he shall keep a true and complete account of all moneys received and disbursements made by the board and by him as such officer. The secretary-treasurer shall, not later than the fifteenth day of January of each year, cause to be prepared, a full, true and accurate account of all moneys received, and of all expenditures made, including per diem and expenses of each board member, during the last preceding calendar year. A copy of such account shall be delivered to the governor of Montana and like copies shall be mailed to every registered dentist in the state of Montana.

History: En. Sec. 4, Ch. 48, L. 1935; amd. Sec. 147, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the words "deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of

dental examiners" for "paid to the secretary-treasurer of the board, who shall be the custodian of the board's receipts and funds, and all disbursements shall be made by him in accordance with this act, and the directors of the board" at the end of the first paragraph.

66-906. (3115.6) Certificate to be registered in counties where practicing—replacing lost certificates—second examination on failure—admission of dentists from other states—reciprocity—annual license fee—inactive fee—due date of annual fee—revocation of license for failure to pay. (1) The certificate in this act provided for shall entitle the holder thereof to practice dentistry in any county in the state of Montana, provided such certificate

shall first be filed for registration and registered in the office of the county recorder of the county in which such holder desires to practice, and nothing herein contained shall be construed to permit any holder of any certificate to practice in any county in this state unless such certificate shall have been first registered in the office of the recorder of such county as herein provided; provided further that any such holder of a certificate may practice in more than one or in any number of counties in this state on having such certificate registered in each [of] such counties in which such holder desires to practice. Said board of dental examiners shall, upon satisfactory proof of the loss of any such certificate issued under the provisions of this act, issue a duplicate certificate in place thereof, and a fee of five dollars (\$5.00) shall be charged for issuing such certificate. Any person failing to pass his first examination before such board, may demand a second examination at any subsequent meeting of said board held for the purpose of examining candidates, and no fee shall be charged for any subsequent examination.

(2). * * * [Same as parent volume.]

(3) In addition to the license fee required of applicants, every licensed dentist practicing within the state of Montana shall pay in each and every year to the secretary-treasurer of the board, the sum of seven dollars (\$7.00), as a license fee for such year. In the event the payment of the annual license fee is not made prior to the first day of May by either practicing dentists or dentists not engaged in the active practice within the state of Montana, and [an] additional penalty of three dollars (\$3.00) shall be charged for late payment which shall be in addition to any other fee requirements of this section.

(4). * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 48, L. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted from the end of the first sentence of subsection (3) a proviso which read: "provided, however, that the board shall have the power to reduce the annual license fee of seven dollars (\$7.00) to the sum of one dollar (\$1.00) or more (but not in excess of seven dollars (\$7.00) per year when the

amount of the balance of cash in the hands of the secretary-treasurer reaches the sum of eight thousand dollars (\$8,000.00), it being the intent of this act that said fund shall be maintained at an approximate level of eight thousand dollars (\$8,000.00)"; deleted from subsection (3) a second sentence which read, "Notice of such change in the amount of dues shall be given to each dentist registered in the state by the secretary-treasurer"; and made minor changes in phraseology.

66-909. (3115.9) Compensation and expenses allowed board members—limitation on duration of examination meetings—employment of counsel to enforce act—secretary-treasurer's compensation. The sum of fifteen dollars (\$15.00) per day for each day actually engaged in the duties of his office and the amount of the actual railroad and Pullman fares to and from his place of residence to the place where the meetings of said board are held, shall be paid to each member of said board attending such meetings. Meetings held for the purpose of examining candidates for license to practice dentistry in Montana shall in no case exceed six days. Said board may, if by it deemed advisable, with the consent of the county

attorney of any county, employ and compensate special counsel to assist in the prosecution in the courts of such county and in the supreme court of this state, of any offense alleged to have been committed under the provisions of this act in such county. The secretary-treasurer of the board shall receive such reasonable compensation for his services as said board may fix.

History: En. Sec. 9, Ch. 48, L. 1935; amd. Sec. 149, Ch. 147, L. 1963.

Amendment

The 1963 amendment at the beginning of the section deleted the words "Out of the funds coming into the possession of the board from the fees and dues charged as hereinabove provided"; deleted the words "out of said fund" which followed the words "employ and compensate" in the third sentence; deleted a fourth sentence which read "Such expenses shall be paid from the fees received by the board under the provisions of this act"; and deleted

from the end of the section two sentences which read "All moneys received from any source in excess of expenses and salaries above provided for, shall be held by the secretary-treasurer of said board as a special fund for meeting the expenses of said board, the proper administration of this act and for such educational purposes as may be deemed wise by said board. All moneys on hand shall be invested or deposited under the direction of the board, and all moneys received by the board under this act shall be and remain subject to its exclusive custody and control."

66-919. (3115.19) Practicing dentistry without certificate, penalty for—disposition of fines. Any person who, as principal, agent, employer, employee or assistant, shall practice dentistry in any manner whatever, or who shall do any act of dentistry, without having first secured his or her certificate to practice dentistry from the state board of dental examiners of the state of Montana entitling him or her to so practice in this state, shall be guilty of a misdemeanor, and upon conviction in a district court shall be fined in any sum not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00) or be confined for any period not exceeding six (6) months in the county jail, for each and every offense. All fines imposed and collected under this act shall be paid into the treasury of the county in which such suits, actions or proceedings shall have been commenced. All moneys thus paid into the treasury over and above the amount necessary to reimburse the county for any expense incurred by said county, in any suit, action or proceeding brought under the provisions of this act, shall be paid, before the first day of January of each year, to the treasurer of the state of Montana, for deposit in the earmarked revenue fund for the use of the state board of dental examiners.

History: En. Sec. 19, Ch. 48, L. 1935; amd. Sec. 3, Ch. 38, L. 1941; amd. Sec. 150, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the words "treasurer of the state of Montana, for deposit in the earmarked revenue fund for the use of the state board of dental

examiners" at the end of the section for "secretary-treasurer of the state board of dental examiners of the state of Montana, and become and be a part of the fund to be used by the said state board of dental examiners in the enforcement of the provisions of this act, and shall be used for no other purpose."

66-925. (3115.25) Citation of act—regulatory board. This act may be known and cited as the "Montana Dentistry Regulation Act."

History: En. Sec. 27, Ch. 48, L. 1935; amd. Sec. 151, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words

"and said state board of dental examiners of the state of Montana is hereby declared to be a regulatory board within the meaning of the proviso of section 79-306" at the end of the section.

CHAPTER 10—MEDICINE—REGULATION OF PRACTICE

Section 66-1008. Fees for examination for admittance—annual license.

66-1009. Compensation and expenses allowed board member—employment of clerks and counsel—secretary's compensation.

66-1001. (3116) **Qualifications, appointment, term of medical examiners.**

Cross-Reference

Exemption from liability of physicians

rendering aid at scene of emergency, sec. 17-410.

66-1007. (3122) **Practicing medicine without certificate—penalties.**

Construction

The offenses listed in paragraph (2) of this section are in the disjunctive rather than the conjunctive. *State v. Moore*, — M —, 375 P 2d 218, 220.

Physiotherapy

An alleged physiotherapist was guilty of violating this section where he attempted to remove moles from patient's body by the use of a surgical diathermy machine. *State v. Moore*, — M —, 375 P 2d 218, 221.

66-1008. (3123) **Fees for examination for admittance—annual license.**

(1). * * * [Same as parent volume.]

(2) In addition to the respective license fees required of applicants, every licensed physician and surgeon practicing within the state of Montana shall pay each and every year to the secretary of the board, an annual registration fee not to exceed the sum of ten dollars (\$10.00), as may be prescribed by the board. The moneys so received from the foregoing and every other source, shall be turned over, by said secretary, to the state treasurer, and shall be by the state treasurer deposited in the earmarked revenue fund for the use of the board of medical examiners. In the event any person licensed to practice medicine absents himself from the state for a period of one or more years, or does not engage in active practice within the state of Montana, he may continue his license in good standing by the payment of three dollars (\$3.00) each year, or, at the discretion of the board, he may be reinstated upon the payment of a fee of three dollars (\$3.00) for each year's absence.

(3). * * * [Same as parent volume.]

History: Ap. p. Sec. 607, Pol. C. 1895; amd. Sec. 1, Ch. 114, L. 1907; Sec. 1592, Rev. C. 1907; re-en. Sec. 3123, R. C. M. 1921; amd. Sec. 1, Ch. 68, L. 1927; amd. Sec. 4, Ch. 132, L. 1943; amd. Sec. 4, Ch. 29, L. 1961; amd. Sec. 128, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "earmarked revenue fund for the use of the board of medical examiners" for "board of medical examiners fund as provided by law" at the end of the second sentence of subsection (2).

66-1009. (3124) **Compensation and expenses allowed board member—employment of clerks and counsel—secretary's compensation.** Each member of the board is hereby allowed the sum of twenty dollars (\$20.00) per day and mileage while in the active and necessary discharge of his duties as a member of said board. The rate of mileage and attendance of witnesses before said board shall be the same as is now allowed in justice of the peace courts. The board must report annually on the first Monday of November to the governor, which report must show all the transactions of the board, giving the number of applications received, and from whom received, the number of certificates granted and those rejected, giving the

reasons therefor, the amount of money received, the expenses, the fees and mileage paid, and by whom received. The board may employ such clerical help and legal counsel as may be necessary to carry out the terms and provisions of this act. The secretary of the board shall receive such reasonable compensation for his services as may be fixed by said board.

History: En. Sec. 608, Pol. C. 1895; re-en. Sec. 1593, Rev. C. 1907; re-en. Sec. 3124, R. C. M. 1921; amd. Sec. 1, Ch. 68, L. 1927; amd. Sec. 5, Ch. 132, L. 1943; amd. Sec. 5, Ch. 29, L. 1961; amd. Sec. 129, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted former second and third sentences reading, "There is hereby established a fund to

be known as the board of medical examiners fund. All moneys in such fund shall only be paid out by warrant drawn on said fund after an order therefor drawn by the secretary, and countersigned by the president, of said board"; and deleted a former next to last sentence reading, "Such clerical help and counsel must be compensated only out of the said fund as fixed by the board."

CHAPTER 12—NURSING—REGULATION OF PRACTICE

Section 66-1228. License—by examination—by endorsement without examination—license fees.

66-1234. Fee.

66-1236. Renewal of license.

66-1237. Disposition of fees.

66-1228. License—by examination—by endorsement without examination—license fees. (1). * * * [Same as parent volume.] ✓

(2) By endorsement without examination. (a) The board, acting under the professional nursing administration, may issue a license to practice nursing as a registered professional nurse without examination, to an applicant who has been duly licensed as a registered professional nurse under the laws of another state, territory or country, if in the opinion of the board the applicant meets the qualifications required of registered nurses in this state at the time the applicant graduated from a school of nursing. The applicant shall pay a fee of twenty-five dollars (\$25.00) at the time the application is submitted, which fee shall be returned to the applicant if the application is withdrawn not later than five (5) days prior to final submission of the application to the board, subject to deduction of five dollars (\$5.00), to be retained by the board.

(b). * * * [Same as parent volume.] ✓

History: En. Sec. 8, Ch. 243, L. 1953; amd. Sec. 1, Ch. 195, L. 1963.

Amendment

The 1963 amendment increased the fee for license by endorsement, as set forth in paragraph (2) (a), from \$20 to \$25.

66-1234. Fee. The applicant applying for a license to practice as a licensed practical nurse shall pay a fee of twenty-five dollars (\$25.00) to the board at the time the application is submitted, which fee shall be returned to the applicant if the application is withdrawn not later than five (5) days prior to the date of examination or the final submission to the board of application for endorsement without examination, subject to a deduction of five dollars (\$5.00) to be retained by the board.

History: En. Sec. 14, Ch. 243, L. 1953; amd. Sec. 2, Ch. 195, L. 1963.

Amendment

The 1963 amendment increased the fee from \$15 to \$25; and made a minor change in phraseology.

66-1236. Renewal of license. The license of every person licensed under the provisions of the act, either as a registered nurse, or a licensed practical nurse, must be annually renewed, except as hereinafter provided. On or before December first of each year, the board shall mail an application form for renewal of license to every person to whom a license was issued or renewed during such year. The applicant shall carefully complete and subscribe the application form and return it to the board with a renewal fee of five dollars (\$5.00) before January first, next. Upon receipt of the application and fee the board shall verify the accuracy of the application against its record, and from such other sources as it deems reliable, and issue to the applicant a certificate of renewal for the current year beginning January first and expiring December thirty-first, following. Such certificate of renewal shall render the holder thereof a legal practitioner of nursing for the period stated in the certificate of renewal.

Any licensee who allows her license to lapse by failing to renew the license as provided above may be reinstated by the board upon satisfactory explanation for such a failure to renew license and on payment of the current renewal fee prescribed by the board.

Any person practicing nursing during any time following the date her license has expired by lapse of time shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of this act.

History: En. Sec. 16, Ch. 243, L. 1953;
amd. Sec. 3, Ch. 195, L. 1963.

Amendment

The 1963 amendment increased the fee specified in the third sentence of the first paragraph from \$2.00 to \$5.00.

66-1237. Disposition of fees. All fees received by the Montana state board of nursing, and all fines collected under this act shall be paid over by the executive secretary to the state treasurer for the credit of the earmarked revenue fund for the use of the state board of nursing.

History: En. Sec. 17, Ch. 243, L. 1953;
amd. Sec. 118, Ch. 147, L. 1963.

for the use of the state board of nursing" at the end of the paragraph for "said fund, as required by law"; and deleted the former second and third paragraphs. For text of deleted provisions, see parent volume.

Amendment

The 1963 amendment deleted the former first three sentences of the first paragraph; substituted "the earmarked revenue fund

CHAPTER 13—OPTOMETRY—REGULATION

Section 66-1307. Renewal of registration—revocation—fees.

66-1311. Compensation of examiners—report.

66-1314. Penalty for violations.

66-1307. (3161) Renewal of registration—revocation—fees. Every registered optometrist who desires to continue the practice of optometry in this state shall annually on or before the second day of July of each year pay to the secretary of said board a renewal fee not to exceed the sum of twenty dollars (\$20.00) in return for which a renewal of registration shall be issued. The board may present to registered optometrists at least one annual educational program. If any person shall fail or neglect to procure his annual renewal of registration, his certificate of registration shall be

revoked by said board; provided, however, that no certificate of registration shall be revoked without ninety (90) days' notice having been given to the delinquent, who within such period shall have the right to the renewal of his certificate of registration on the payment of the renewal fee with a penalty of twenty-five dollars (\$25.00).

History: En. Ch. 138, L. 1907; re-en. Sec. 1613, Rev. C. 1907; amd. Sec. 2, Ch. 128, L. 1917; re-en. Sec. 3161, R. C. M. 1921; amd. Sec. 4½, Ch. 171, L. 1925; amd. Sec. 4, Ch. 252, L. 1959; amd. Sec. 120, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "The board may present" for "The board may use not to exceed ten dollars (\$10.00) from each renewal fee for the purpose of presenting" at the beginning of the second sentence.

66-1311. (3165) Compensation of examiners—report. Each member of the board may receive as compensation the sum of twenty-five dollars (\$25.00) and necessary expenses for each day actually engaged in the duties of his office. All moneys received by the board shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of examiners in optometry. The secretary of said board shall make an annual report of its proceedings to the governor on the first Monday in January of each year, which report shall contain an account of all moneys received and disbursed by them pursuant to this act.

History: En. Ch. 138, L. 1907; re-en. Sec. 1617, Rev. C. 1907; re-en. Sec. 3165, R. C. M. 1921; amd. Sec. 5, Ch. 171, L. 1925; amd. Sec. 5, Ch. 252, L. 1959; amd. Sec. 121, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "Each member of the board" at the beginning of the section for "Out of the funds coming into the possession of said board, each member thereof"; and substituted the second sentence for a sentence and clauses

reading, "Such sums shall be paid from the fees received by said board under the provisions of this act, and no part of the salary or other expenses of the board shall ever be paid out of the state treasury. All moneys received in excess of said expenses, as above provided for, shall be held by the secretary as a special fund for meeting expenses of said board, and carrying out the provisions of this act, and he shall give such bonds as the board shall from time to time direct, and."

66-1314. (3167) Penalty for violations. Any person who shall violate any of the provisions of this act or the rules and regulations of the state board of examiners shall be decreed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than two hundred dollars (\$200.00) and not more than five hundred dollars (\$500.00), or by imprisonment in the county jail not exceeding six (6) months, or by both fine and imprisonment as the court may determine. All fines thus received shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of examiners in optometry.

History: En. Ch. 138, L. 1907; re-en. Sec. 1619, Rev. C. 1907; re-en. Sec. 3167, R. C. M. 1921; amd. Sec. 8, Ch. 171, L. 1925; amd. Sec. 6, Ch. 130, L. 1939; amd. Sec. 122, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of examiners in optometry" for "paid into the treasury of the board" at the end of the section.

CHAPTER 14—OSTEOPATHY—REGULATION OF PRACTICE

Section 66-1405. Subjects of examination—appeal.

66-1410. Compensation of board—report to governor.

66-1405. (3129) Subjects of examination—appeal. (1) and (2). * * *
[Same as parent volume.] ✓

(3) After examination the board shall grant a license to such applicants as shall pass the examination to practice osteopathy in the state of Montana, which license shall be granted by not less than two members of said board, attested by the seal thereof. The fee for such examination and license shall be twenty dollars (\$20.00).

History: En. Ch. 51, L. 1905; re-en. Sec. 1598, Rev. C. 1907; re-en. Sec. 3129, R. C. M. 1921; amd. Sec. 2, Ch. 108, L. 1953; amd. Sec. 145, Ch. 147, L. 1963.

"For the support and maintenance of said board" at the beginning of the second sentence of subsection (3); and deleted the words "which shall be paid in advance to the secretary of said board to defray the expenses thereof" at the end of the second sentence of subsection (3).

Amendment

The 1963 amendment deleted the words

66-1410. (3134) Compensation of board—report to governor. Each of the members of said board may receive as compensation the sum of five dollars (\$5.00) for each day actually engaged in the duties of their office, together with all legitimate and necessary expenses incurred in attending the meetings of said board. The fees coming into said board shall be deposited into the state treasury to the credit of the earmarked revenue fund for the use of the state board of osteopathic examiners. Said board shall make an annual report of its proceedings to the governor of the state for the year ending on the thirty-first day of December preceding the making of said report. Said report shall be filed with the governor on or before the fifteenth day of January of each year.

History: En. Sec. 10, p. 51, L. 1901; re-en. Sec. 10, Ch. 51, L. 1905; re-en. Sec. 1603, Rev. C. 1907; re-en. Sec. 3134, R. C. M. 1921; amd. Sec. 146, Ch. 147, L. 1963.

the section; and substituted the second sentence for sentences reading, "No part of the compensation or other expenses of said board shall be paid out of the state treasury. The fees coming into the treasury of said board shall be paid out upon a warrant of the president and secretary thereof in payment of the compensation and expenses of said board in carrying out the provisions of this act."

Amendment

The 1963 amendment deleted the words "Out of the funds coming into the possession of said board" at the beginning of

CHAPTER 15—PHARMACY—REGULATION OF SALE OF DRUGS AND MEDICINES

Section 66-1527. Disposition of fees and fines.

66-1508. Store license—certified pharmacy license, etc.

Sale of Unlabeled Drugs

A pharmacy license may be suspended for a single sale of unlabeled drugs in

violation of section 66-1523. *Western Drug of Great Falls v. Gosman*, — M —, 374 P 2d 507, 510.

66-1509. Judicial review of acts of board.

Jurisdiction

On review of an order of suspension of pharmacy license by the state board of pharmacy the district court has jurisdiction to annul the action of the board if the

record before the court indicates that the board acted capriciously or arbitrarily, or without jurisdiction or authority. *Western Drug of Great Falls v. Gosman*, — M —, 374 P 2d 507, 510.

Remand of Cause

On appeal to the district court by drug-gist from an order of suspension of pharmacy license by the state board of pharmacy, evidence of harshness and excessiveness of penalty was sufficient to require court to remand the cause to the board with instruction to place such evidence in the record for further consideration as it deemed proper. *Western Drug of Great Falls v. Gosman*, — M —, 374 P 2d 507, 510.

Scope of Review

Additional testimony may not be received by the district court in reviewing an order of the board of pharmacy. *Western Drug of Great Falls v. Gosman*, — M —, 374 P 2d 507, 510.

The word "review" as used in this section means a judicial re-examination as of the proceedings of a lower court by a higher court. *Western Drug of Great Falls v. Gosman*, — M —, 374 P 2d 507, 510.

66-1523. Wrongful labeling.**Suspension of License**

A single sale of unlabeled drugs in violation of this section is ground for suspension of pharmacy license under sec-

tion 66-1508. *Western Drug of Great Falls v. Gosman*, — M —, 374 P 2d 507, 510.

66-1527. (3202.12) Disposition of fees and fines. All fines paid under the provisions of this act and all fees collected by or under the authority of the state board of pharmacy of the state of Montana for registration and licenses issued under this act shall be transmitted to the state board of pharmacy and by it deposited in the state treasury to the credit of the earmarked revenue fund for the use of the state board of pharmacy.

History: En. Sec. 6, Ch. 104, L. 1931; amd. Sec. 16, Ch. 175, L. 1939; amd. Sec. 134, Ch. 147, L. 1963.

Amendment

The 1963 amendment rewrote this section. For section prior to amendment, see parent volume.

CHAPTER 18—PUBLIC ACCOUNTANTS—REGULATION

Section 66-1812. Disposition of funds—expenses of board, how paid.

66-1812. (3241.12) Disposition of funds—expenses of board, how paid. All funds received under this act, or under or by virtue of prior accountancy laws shall be received by the university and paid into the general fund.

The members of the board of examiners in accountancy shall receive their actual traveling and hotel expenses incurred while engaged in the performance of their duties, as imposed upon them by this act, but shall receive no other compensation. Such expenses, together with the expense of preparing and issuing certificates, publishing notices of examinations, and all other expenses arising from the administration of this act shall be paid by the university.

History: En. Sec. 12, Ch. 46, L. 1933; amd. Sec. 233, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the general fund" for "the board of accountancy fund" at the end of the first paragraph; deleted "from the fees received

from applicants" at the end of the second sentence in the second paragraph; and deleted a final sentence reading, "In no event shall any expenses arising from the administration of this act become a charge against the funds of the university or the state of Montana."

CHAPTER 19—REAL ESTATE LICENSE ACT

- Section 66-1924. Title—license required.
 66-1925. Definitions.
 66-1926. Exempted classes.
 66-1927. Real estate commission—members—districts—powers and duties—employees—compensation—disposition of fees.
 66-1928. Disposition of excess over \$7,500.00.
 66-1929. Licenses—applicants for licenses.
 66-1930. Written examination—contents—time and place—exemptions.
 66-1931. License—issuance—suspension—revocation.
 66-1932. License—delivery—display—pocket card.
 66-1933. Bond of brokers and salesman.
 66-1934. Fees—when due.
 66-1935. Requirements for office—employment of salesmen—issuance and display of license.
 66-1936. Transactions with nonresidents and with nonlicensed brokers or salesmen—consent to legal process.
 66-1937. Grounds for refusal—suspension or revocation of license.
 66-1938. Hearings—procedures.
 66-1939. Appeal to court—supersedeas—bond.
 66-1940. Penalties—legal actions.
 66-1941. Action for compensation.
 66-1942. Members of company—license required.
 66-1943. Real estate meetings and clinics open to all licensees.
 66-1944. Attorney for commission.
 66-1945. Publication of directory.
 66-1946. No repeal of section 94-1822.

66-1901 to 66-1923. (4056 to 4078) Repealed.

Repeal

These sections (Secs. 1 to 23, Ch. 195, L. 1921; Secs. 1, 2, Ch. 40, L. 1925; Sec. 1, Ch. 7, L. 1933; Sec. 1, Ch. 150, L. 1953; Sec. 1, Ch. 129, L. 1957; Sec. 1, Ch. 130,

L. 1957; Sec. 1, Ch. 131, L. 1957; Sec. 1, Ch. 132, L. 1957), relating to real estate brokers, were repealed by Sec. 24, Ch. 250, Laws 1963.

66-1924. Title—license required. This act shall be known and may be cited as the “Real Estate License Act of 1963.” From and after the effective date of this act it shall be unlawful for any person to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting the business, or acting in the capacity of a real estate broker or a real estate salesman within this state without first having procured a license as such broker or salesman, as provided in this act.

History: En. Sec. 1, Ch. 250, L. 1963.

Title of Act

An act providing for the application, qualifications, bonding, licensing, supervision and regulation of real estate brokers and real estate salesmen; providing for the collection and disposition of fees; providing for a state real estate commission and defining its powers and duties; providing reciprocity of licenses, examination and consent to suit by nonresidents; providing grounds for denial, revocation or suspension of licenses; providing hearing procedure; providing for appeals from decisions of the commission and district

court; prescribing fees and their disposal; providing penalties for the violation of this act or of any rule or regulation issued by the commission; containing a severability clause; repealing sections 66-1901 through and including 66-1923, Revised Codes of Montana, 1947, as amended by Chapter 129, Laws of 1957, Chapter 130, Laws of 1957, Chapter 131, Laws of 1957, and Chapter 132, Laws of 1957; providing section 94-1822 of the Revised Codes of Montana of 1947 shall not be amended, modified, or repealed by this act; and containing an effective date for this act; and repealing all acts and parts of acts in conflict herewith.

66-1925. Definitions. As used in this act, the following terms shall have the following meanings except where the context clearly indicates that another meaning is intended:

(a) The term "real estate" shall include leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or nonfreehold, and whether the real estate is situated in this state or elsewhere.

(b) The term "broker" shall include any person or organization who for another, or for a fee, commission or other valuable consideration, or who with the intent or expectation of receiving the same, negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange or lease of any real estate or of the improvements thereon, or collects rents or attempts to collect rents, or advertises or holds himself out as engaged in any of the foregoing activities. The term "broker" also includes any person or organization employed by or on behalf of the owner or owners, or lessor or lessors of real estate, to conduct the sale, leasing, subleasing or other disposition thereof at a salary or for a fee, commission or any other consideration; it also includes any person who engages in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby he undertakes primarily to promote the sale, lease or other disposition of real estate within this state through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both.

(c) The term "salesman" shall include any person who, for a salary, commission or compensation of any kind, is employed, either directly, indirectly, regularly or occasionally, by any real estate broker to sell, purchase or negotiate for the sale, purchase, exchange or renting of any real estate.

(d) The term "person" shall mean and include individuals, partnerships, associations and corporations, foreign and domestic.

(e) The term "he" shall mean and include "she" and "it." The term "his" shall mean and include "her" and "its."

History: En. Sec. 2, Ch. 250, L. 1963.

66-1926. Exempted classes. A single act performed, for a commission or compensation of any kind, in the buying, selling, exchanging, leasing or renting of real estate or in negotiating therefor for others, except as hereinafter specified, shall constitute the person performing any of such acts a real estate broker or real estate salesman. The provisions of this act, however, shall not (1) apply to any person who, as owner or lessor, shall perform any of the aforesaid acts with reference to property owned or leased by himself, or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by such owner or lessor, or (2) apply to any person acting as attorney in fact under the duly executed power of attorney from the owner of any real estate authorizing the final consummation of any contract for the purchase, sale, exchange, renting or leasing of any real estate, or (3) be construed to include in any way the services rendered by any attorney at law in the performance of his duty as such attorney at law, or (4) apply to any person duly appointed by a court for purpose of evaluation or appraising an estate in a probate matter, or (5) be held to include, while acting as such, a

receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust or will, or an auctioneer, employed by a receiver, trustee in bankruptcy, administrator, executor or trustee, to aid and assist in conducting a public sale held by any such officer, or (6) apply to public officials in the conduct of their official duties, or (7) apply to any person, partnership, association or corporation, foreign and domestic, performing any act with respect to prospecting, leasing, drilling or operating land for hydrocarbons and hard minerals, or disposing of any hydrocarbons, hard minerals or mining rights therein, whether upon a royalty basis or otherwise.

History: En. Sec. 3, Ch. 250, L. 1963.

66-1927. Real estate commission—members—districts—powers and duties — employees — compensation — disposition of fees. (a) There is hereby created the Montana real estate commission, hereinafter referred to as the "commission," to consist of the commissioner of agriculture, who shall act as chairman of the commission, and four members, each of whom shall be a resident of this state, at least two of whom shall be active and licensed as real estate brokers and who have been actively engaged in the real estate business as a broker in this state for not less than five (5) continuous years prior to the date of appointments. The four members of the commission, other than the chairman, shall be appointed by the governor as follows:

Not more than two members shall be from the same congressional district, with no more than one eligible real estate broker residing in the same congressional district, and not more than three persons on the commission, including the chairman, shall be of the same political party. Upon the initial appointments, the first congressional district's two members shall be appointed for one year and the other for three years, and the second congressional district's members shall be appointed for two years and four years, respectively. Thereafter the term of each member shall be for four (4) years and until their successors are appointed and qualify. In the event of a vacancy on the commission, the governor shall fill the vacancy by appointing a resident from the same district as the member whose office has become vacant, to serve as a member for the unexpired term. If a member takes up residency in a district different from the one in which he resided at the time of appointment, he automatically vacates his commission position. Upon the qualification of the members appointed, the commission shall do all things necessary and proper for carrying out the provisions of this act, and shall from time to time promulgate rules and regulations not inconsistent herewith and make necessary amendments thereto.

(b) The chairman shall cause to be kept a record of all proceedings, transactions, communications and official acts of the commission, be custodian of all the records of the commission and shall cause to be performed such other duties as the commission upon the written request of two or more members of the commission or at such other times as the chairman may in his discretion deem necessary. The commission is

authorized to employ such employees as may be necessary to properly carry out the provisions of this act, to fix the salaries of such employees, and to make such other expenditures as are necessary to properly carry out the provisions of this act. The office of the commission shall be maintained in the office of the commissioner of agriculture at the state capitol at Helena, and all files, records and property of the commission shall at all times be and remain therein. Neither the chairman nor any employee of the commission may be an officer or paid employee of any real estate association or group of real estate dealers or brokers.

(c) Each member of the commission shall receive as compensation for each one-half day or portion thereof actually spent on his official duties the sum of seven dollars and fifty cents (\$7.50) and his actual and necessary expenses incurred in the performance of any other duties provided for by the commission.

(d) The commission shall adopt a seal of such design as it shall prescribe. Copies of all records and papers in the office of the commission, duly certified by the chairman and authenticated by the seal of the commission, shall be received in evidence in all courts with like effect as the original. All records of the commission shall be open to public inspection under such reasonable rules and regulations as it shall prescribe.

(e) All fees collected under the provisions of this act shall be deposited at least monthly with the state treasurer and said funds so deposited shall be apportioned as follows:

Five per cent (5%) from each examination fee and twelve and one-half per cent (12½%) from all other fees collected shall be deposited to the credit of the general fund of the state to reimburse the state for its costs in administering this act.

The balance of said fees collected by the commission shall be deposited to the credit of the earmarked revenue fund and are hereby appropriated for the purposes of carrying out the provisions of this act. All expenditures from said funds by the commission under the provisions of this act shall be certified and approved by the chairman of the commission and paid by the appropriate state officials. Payment shall be made upon warrants appropriately drawn out of the proper funds. The commission shall provide a system of accounting which shall show the amount of money received therefor, and also an itemized statement of the expenses in connection therewith.

The commission shall have the power to make orders concerning the disbursement of the moneys in said earmarked revenue fund, including the payment of compensation and expenses of its members, clerks, employees, and board members.

(f) The commission shall have the power and authority to promulgate rules and regulations governing and regulating its internal operation and business meetings. The commission shall also have the power and authority to promulgate rules and regulations relating to the administration of this act but not inconsistent therewith.

History: En. Sec. 4, Ch. 250, L. 1963.

66-1928. Disposition of excess over \$7,500.00. All moneys, investments and credits in excess of seven thousand five hundred dollars (\$7,500.00) remaining in the state treasury to the credit of the commission in the earmarked revenue fund at the close of the license year on December 31st of each year, after the payment of all expenses for that year, shall on or before the fifteenth day of the succeeding month be determined by the commission and shall be transferred from the earmarked revenue fund to the general fund to become available for general governmental purposes.

History: En. Sec. 5, Ch. 250, L. 1963.

66-1929. Licenses—applicants for licenses. (a) Licenses shall be granted only to persons who are deemed by the commission to be of good repute and competent to transact the business of a broker or salesman in such manner as to safeguard the interests of the public.

(b) Each applicant for a broker's license shall be a citizen of the United States, at least twenty-one (21) years of age, and must file an application for license with the commission. The commission shall require such information as it may deem necessary from every applicant to determine his honesty, trustworthiness and competency. Every officer of a corporation acting as a broker and every member of an association or partnership acting as a broker shall obtain a broker's license.

(c) Each applicant for a salesman's license shall be at least twenty-one (21) years of age and must file an application for license with the commission. His application shall be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect. The commission shall issue to each licensed broker and to each licensed salesman a license and a pocket card in such form and size as the commission shall prescribe.

History: En. Sec. 6, Ch. 250, L. 1963.

66-1930. Written examination—contents—time and place—exemptions. (a) In addition to proof of honesty, trustworthiness and good reputation, each applicant whose application is then pending shall satisfactorily pass a written examination prepared by or under the supervision of the commission. The examination shall be given at least once each six months and at such places within the state as the commission shall prescribe. The examination for a salesman's license shall include business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisal, a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency and brokerage and the provisions of this act. The examination for a broker's license shall be of a more exacting nature and scope and more stringent than the examination for a salesman's license. An applicant who has failed twice in succession to pass the same class of examination shall be ineligible for a further examination until six months have passed; provided, however, that any resident of the state of Montana who was at the effective date of this act actively engaged in the real estate business as a licensed broker in this

state may, upon complying with the other requirements for a broker's license, obtain a broker's license without examination if application therefor is made within ninety (90) days after the effective date of this act; and provided further that any person who has acted as a licensed salesman upon complying with the other requirements for a salesman's license may obtain a salesman's license without an examination if application is made within ninety (90) days after the effective date of this act.

History: En. Sec. 7, Ch. 250, L. 1963.

66-1931. License—issuance—suspension—revocation. The commission shall have the full power to regulate the issuance of licenses and to revoke or suspend licenses issued under the provisions of this act.

History: En. Sec. 8, Ch. 250, L. 1963.

66-1932. License—delivery—display—pocket card. The commission shall prescribe the form of license. Each license shall have placed thereon the seal of the commission. The license of each real estate salesman shall be delivered or mailed to the real estate broker by whom the real estate salesman is employed, and shall be kept in the custody and control of such broker. It shall be the duty of each broker to display his own license conspicuously in his place of business. The commission shall annually prepare and deliver a pocket card certifying that the person whose name appears thereon is a registered real estate broker or a registered real estate salesman, stating the period for which fees have been paid and including, on real estate salesman's cards only, the name and address of the broker employing such real estate salesman.

History: En. Sec. 9, Ch. 250, L. 1963.

66-1933. Bond of brokers and salesman. No license shall be issued or renewed until the applicant for a broker's license or salesman's license has filed a bond with the commission in the sum of ten thousand dollars (\$10,000.00), running to the state of Montana and executed by a surety company duly authorized to do business in the state of Montana. The bond shall be in a form approved by the commission and conditioned that the applicant shall conduct his business and himself in accordance with the provisions of this act. All bonds given by licensees under the provisions of this act, after approval, shall be filed and held in the office of the commission.

History: En. Sec. 10, Ch. 250, L. 1963.

66-1934. Fees—when due. To pay the expense of the maintenance and operation of the office of the commission and the enforcement of this act, a fee not to exceed the amount indicated below shall be charged by the commission and paid into the earmarked revenue fund for each of the following:

- (a) For each examination, a fee not to exceed fifty dollars (\$50.00).
- (b) For each original resident broker's license issued, a fee not to exceed fifty dollars (\$50.00).
- (c) For each annual renewal of a resident broker's license, a fee not to exceed fifty dollars (\$50.00).

(d) For each original nonresident broker's license issued, a fee not to exceed fifty dollars (\$50.00).

(e) For each annual renewal of a nonresident broker's license, a fee not to exceed fifty dollars (\$50.00).

(f) For each original salesman's license issued, a fee not to exceed twenty-five dollars (\$25.00).

(g) For each annual renewal of a salesman's license, a fee not to exceed twenty-five dollars (\$25.00).

(h) For each additional office or place of business, an annual fee not to exceed twenty-five dollars (\$25.00).

(i) For each change of place of business or change of employer or contractual associate, a fee not to exceed twenty-five dollars (\$25.00).

(j) For each duplicate license, where the original license is lost or destroyed and affidavit is made thereof, a fee not to exceed ten dollars (\$10.00).

(k) For each duplicate pocket card, where the original pocket card is lost or destroyed and affidavit is made thereof, a fee not to exceed ten dollars (\$10.00).

The commission shall at its first meeting prepare a schedule of fees within the limits set by this section. The commission may from time to time revise such schedule of fees within the limits herein provided; provided, however, a fee once set for any one of the items herein for which a fee is charged cannot be increased or decreased until at least one year has passed since the fee for that particular item was last increased or decreased.

All annual fees shall be due and payable for the ensuing year during the month of December of each year. Failure to remit annual fees before January 1 will automatically cancel such license, but otherwise said license will remain in full force and effect continuously from the date of issuance, unless suspended or revoked by said commission for just cause.

History: En. Sec. 11, Ch. 250, L. 1963.

66-1935. Requirements for office—employment of salesmen—issuance and display of license. (a) Each resident licensed broker shall maintain a fixed office within this state. The original license of the broker and the original license of each salesman in the employ of or under contract with such broker shall be prominently displayed in the office. The address of the office and any branch office shall be designated on the broker's license. In case of removal from the designated address, the licensee shall notify the commission before such removal or within ten days thereafter, designating the new location of this office, and paying the required fee, whereupon a license for the new location for the unexpired period shall issue.

(b) A salesman shall not be employed by or under contract to more than one licensed broker nor shall he perform services for any broker other than the one designated upon the license issued to the salesman. Whenever a licensed salesman desires to change his employment or contractual relationship from one licensed broker to another, he shall notify the commission promptly in writing of the facts attendant thereon, pay the required fee, and return his license and pocket card, and a new license

and pocket card shall thereupon be issued. No salesman shall directly or indirectly work for or with a broker until he has been issued a license to work for or with that broker. Upon termination of a salesman's employment or contractual relationship he shall surrender his license and pocket card to his broker, who shall return them to the commission for cancellation.

(c) Only one license shall be issued to any salesman to be in effect at one time.

History: En. Sec. 12, Ch. 250, L. 1963.

66-1936. Transactions with nonresidents and with nonlicensed brokers or salesmen—consent to legal process. (a) It is unlawful for any licensed broker to employ or compensate directly or indirectly any person for performing any of the acts regulated by this act who is not a licensed broker or licensed salesman; provided, however, that a licensed broker may pay a commission to a licensed broker of another state so long as such nonresident broker has not conducted and does not conduct in this state any service for which a fee, compensation or commission is paid; provided, further, this subsection shall not limit the provisions of the subsection following.

(b) A nonresident of this state, who is actively engaged in the real estate business, who maintains a place of business in another state and who has been duly licensed in such other state to conduct such business in that state, may obtain a license as a broker in this state by complying with all provisions of this act; provided, however, that this section shall apply only to those brokers of other states which offer the same privileges to the licensed brokers of this state. Such nonresident licensee need not maintain a place of business within this state. The commission may license such nonresident broker without examination, provided that he files with the said commission a duly authorized or certified copy of the license issued to such nonresident for the conducting of such business in any other state, and by paying to the said commission the same license fee as is herein provided for the obtaining of a broker's license in this state. The commission may in its discretion refuse to issue a broker's license to an applicant who is not a resident of this state.

(c) Every nonresident broker shall file an irrevocable written consent that legal actions arising out of any commenced or completed transaction may be commenced against such nonresident broker in any county of this state which may be appropriate and designated by section 93-2904; and such consent shall provide that service of summons in any such action may be served upon the chairman of the commission, for and on behalf of said nonresident broker, and such service shall be held to be sufficient to give the court jurisdiction over such nonresident broker and his salesman or agent conducting any such transaction in any county. The consent shall be duly acknowledged, and if made by a corporation, shall be authenticated by its seal. Any service of process or pleading made upon the commission shall be by duplicate copies, one of which shall be filed in the office of the commission and the other forwarded by registered mail to the last known principal address of the nonresident broker against whom

said process or pleading is directed. In any action in which service of process or pleading is made upon the commission no default shall be taken except upon certification of the chairman of the commission that a copy of said process or pleading was mailed to the defendant as herein provided. In actions in which service of process or pleading is made upon the commission, defaults may be entered and default judgments taken in the manner provided as in the case where publication of summons is had; provided the method of service of process or pleadings provided for by this section shall in no way limit section 93-2702, Revised Codes of Montana, 1947. (Rule 4, M.R. Civ. P.)

History: En. Sec. 13, Ch. 250, L. 1963.

66-1937. Grounds for refusal—suspension or revocation of license.

The commission may, upon its own motion, and shall, upon the sworn complaint in writing of any person, investigate the actions of any real estate broker or any real estate salesman and shall have the power to revoke or suspend any license issued under this act whenever the broker or salesman has been found guilty by a majority of the commission of any of the following practices:

(1) Intentionally misleading, untruthful or inaccurate advertising, whether printed or by radio, display or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies or services of the business conducted;

(2) Making any false promises of a character likely to influence, persuade or induce;

(3) Pursuing a continued and flagrant course of misrepresentation, or making false promises through agents or salesmen, or any medium of advertising, or otherwise;

(4) Use of the term "realtor" by a person not authorized to do so, or using any other trade name or insignia of membership in any real estate organization of which the licensee is not a member;

(5) Failing to account for or to remit any money coming into his possession belonging to others;

(6) Accepting, giving or charging any undisclosed commission, rebate or profit on expenditures made for a principal;

(7) Acting in a dual capacity of broker and undisclosed principal in any transaction;

(8) Guaranteeing or authorizing or permitting any person to guarantee future profits which may result from the resale of real property;

(9) Offering real property for sale or lease without the knowledge and consent of the owner or his authorized agent or on any terms other than those authorized by the owner or his authorized agent;

(10) Inducing any party to a contract of sale or lease to break such contract for the purpose of substituting, in lieu thereof, a new contract with another principal;

(11) Accepting employment or compensation for appraising real property contingent upon the reporting of a predetermined value or issuing an appraisal report on real property in which he has an undisclosed interest;

(12) Negotiating a sale, exchange or lease of real property directly with an owner or lessor if he knows that such owner has a written outstanding contract in connection with such property, granting an exclusive agency to another broker;

(13) Soliciting, selling or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(14) Representing or attempting to represent a real estate broker, other than the employer, without the express knowledge or consent of the employer;

(15) Failing voluntarily to furnish a copy of any written instrument to any party executing the same at the time of its execution;

(16) Paying a commission or compensation to any person for performing the services of a real estate broker or real estate salesman who has not first secured his license under this act;

(17) Intentionally violating any reasonable rule or regulation promulgated by the commission in the interests of the public and in conformance with the provisions of this act;

(18) Failing, if a salesman, to place, as soon after receipt as is practically possible, in the custody of his registered broker, any deposit money or other money entrusted to him by any person with him as a representative of his registered broker;

(19) Demonstrating his unworthiness or incompetency to act as a broker or salesman.

(20) Conviction of a felony.

History: En. Sec. 14, Ch. 250, L. 1963.

66-1938. Hearings — procedures. (a) Before the commission shall deny any application for a license or revoke or suspend a license, the applicant or licensee shall be entitled to a hearing. The hearing shall be held after twenty (20) days' notice to the applicant or licensee. In case of filing of charges against a licensee, a copy of such charges shall be attached to the notice and be sent by registered mail to the last known address of the licensee. The licensee shall file an answer to the charges, in triplicate, within twenty (20) days after notice has been mailed by the commission. The commission shall thereupon notify the parties to the dispute of the time and place of hearing, which shall be held in accordance with rules promulgated by the commission and in conformity with the laws of this state. If the applicant or license holder is a salesman, the commission shall also notify the broker employing him or in whose employ he seeks to enter by mailing such a notice to the broker's last known business address.

(b) The applicant or licensee shall have full authority to be heard in person or by counsel before the commission in reference to the denial of application on charges filed against him.

(c) In the preparation and conduct of such hearing, the chairman shall have power to issue and sign subpoenas to require the attendance and testimony of any witness and the production of any papers or books. He may administer oaths, examine the witnesses and take any evidence

he deems pertinent to the determination of the charges. Any witness so subpoenaed shall be entitled to the same fees and mileage as is prescribed by law in judicial proceedings in the district courts of this state in civil actions, but the payment of such fees and mileage must be paid out of and kept within the limits of the funds created from such license fees. The party against whom such charges may be filed shall have the right to obtain from the chairman a subpoena for any witnesses whom he may desire at such hearing. The chairman shall issue such subpoenas as desired by the party against whom the charges have been filed. Depositions may also be taken and used as in civil court cases in the district courts.

(d) Where, in any proceeding before the commission, any witness shall fail or refuse to attend upon the subpoena issued, or shall refuse to testify, or shall refuse to produce any records or documents, the production of which is called for by the subpoena, the attendance of the witness and the giving of his testimony, and the production of the documents and records may be enforced in the same manner as courts of competent jurisdiction enforce the attendance, testimony of witnesses and production of records in civil cases in the courts of this state.

History: En. Sec. 15, Ch. 250, L. 1963.

66-1939. Appeal to court—supersedeas—bond. (a) Any person aggrieved shall have the right of appeal from any adverse ruling, order or decision of the commission to the district court of the county in which he resides or maintains his business, or in the county where the hearing was held, within thirty (30) days from the service of notice of the action of the commission upon the parties thereto.

(b) Notice of appeal shall be filed in the office of the clerk of the court, which shall issue a writ of certiorari directed to the commission, commanding it, within ten (10) days after service thereof, to certify and file with the court a certified copy of the records of the case in which the appeal has been taken, including all documents and papers and a transcript of all testimony taken in the matter, together with the commission's findings, conclusions, and orders therein. The appeal shall be heard in due course without a jury by the court, which shall review the record, and after hearing thereon, make its determination of the cause.

(c) Any person taking an appeal to the district court shall post a bond in the amount of three hundred dollars (\$300.00) for the payment of any costs which may be taxed against him.

(d) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the commission, the court may order that the additional evidence be taken before the commission upon conditions determined by the court. The commission may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings or decisions with the reviewing court.

(e) An appeal may be taken to the supreme court from a district court by the commission or by any person aggrieved from an adverse ruling, order or decision of the district court. Such appeal shall be taken within sixty (60) days after the order is made and entered in the minutes of the court filed with the clerk. The method and procedure of taking an appeal, together with the amount of the undertaking or deposit on appeal, shall be governed by Chapter 80 of Title 93, Revised Codes of Montana, 1947.

(f) Any order, rule or decision of the commission shall not take effect until after the time for appeal has expired. In the event an appeal is taken by a licensee or applicant, the appeal shall not act as a supersedeas unless the court so directs, and the court shall dispose of the appeal and enter its decision promptly.

History: En. Sec. 16, Ch. 250, L. 1963.

66-1940. Penalties—legal actions. (a) Any person acting as a broker or salesman without first obtaining a license shall be guilty of a misdemeanor and upon conviction thereof by a district court of this state shall be punishable by a fine of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00) or by imprisonment for a term not to exceed ninety (90) days, or both. Upon conviction of a second or subsequent violation, the person shall be punishable by a fine of not less than five hundred dollars (\$500.00) or more than two thousand dollars (\$2,000.00) or by imprisonment for a term not to exceed six (6) months, or both.

(b) In case any person in a civil action is found guilty of having received any money, or the equivalent thereof, as a fee, commission, compensation, or profit by or in consequence of a violation of any provision of this act, he shall in addition be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court, which penalty may be recovered in any court of competent jurisdiction by any person aggrieved.

(c) Any person sustaining damages by failure of a real estate broker or real estate salesman to comply with the provisions of this act, shall have the right to commence an action in his own name against the real estate broker and his surety, or the real estate salesman and his surety, or both the broker and any salesman employed directly or indirectly by such broker and their respective sureties, for the recovery of any damages sustained as the result of any act specified in section 14 [66-1937] herein or as a result of the failure of the real estate broker or real estate salesman to comply with the provisions of this act. In all cases where suit is brought against the broker or the salesman, and his surety, the court shall, upon entering judgment for the plaintiff, allow as a part of the costs of suit a reasonable amount as attorney's fees.

All penalties provided for by this section may be collected from the broker's and salesman's bonds provided by section 10 [66-1933] of this act.

History: En. Sec. 17, Ch. 250, L. 1963.

66-1941. Action for compensation. Any person engaged in the business of or acting in the capacity of a real estate broker or real estate salesman within this state shall not be permitted to bring or maintain any action in the courts for the collection of compensation for the sale or lease or otherwise disposing of real estate without first alleging and proving that such person was a duly licensed real estate broker or real estate salesman at the time the alleged cause of action or claim arose.

History: En. Sec. 18, Ch. 250, L. 1963.

66-1942. Members of company—license required. Every member or officer of each partnership, association or corporation, who actively participates in the real estate brokerage business of such partnership, association or corporation, shall obtain a license as a real estate broker and every employee, who acts as a salesman for such partnership, association or corporation, shall hold a license as a real estate salesman.

History: En. Sec. 19, Ch. 250, L. 1963.

66-1943. Real estate meetings and clinics open to all licensees. (a) The commission is authorized to conduct, hold or assist in conducting or holding real estate clinics, meetings, courses or institutes and to incur the necessary expenses in connection therewith.

(b) The commission is authorized to assist libraries and educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees.

History: En. Sec. 20, Ch. 250, L. 1963.

66-1944. Attorney for commission. The attorney general of the state shall render to the commission opinions on all questions of law relating to the interpretation of this act or arising in the administration thereof. The attorney general shall further act as attorney for the said commission in all actions and proceedings brought by or against it under or pursuant to any of the provisions of this act; provided, all fees and expenses of the attorney general acting in such capacity shall be paid out of commission moneys in the earmarked revenue fund.

History: En. Sec. 21, Ch. 250, L. 1963.

66-1945. Publication of directory. The commission shall annually publish a directory of licensees, including a list of licenses suspended and revoked, which shall contain such other data as the commission may determine to be in the interest of real estate licensees and the public.

History: En. Sec. 22, Ch. 250, L. 1963.

66-1946. No repeal of section 94-1822. Nothing contained herein shall be construed to amend, modify or repeal section 94-1822 of the Revised Codes of Montana of 1947. This act shall be construed to be supplemental to said section 94-1822.

History: En. Sec. 25, Ch. 250, L. 1963.

Separability Clause

Section 23 of Ch. 250, Laws 1963 read "Unconstitutionality—severability. If any provision of this act is held invalid, that

provision shall be deemed to be excised from this act and the invalidity thereof shall not affect any of the other provisions of this act. If the application of any provision of this act to any person or circumstance is held invalid, it shall not

affect the application of such provision to such persons or circumstances other than those to which it is held invalid."

Repealing Clauses

Section 24 of Ch. 250, Laws 1963 read "Repealing clause. This act expressly repeals sections 66-1901 through and including 66-1923, Revised Codes of Montana, 1947, as amended by Chapter 129, Laws of 1957, Chapter 130, Laws of 1957, Chap-

ter 131, Laws of 1957 and Chapter 132, Laws of 1957."

Section 27 of Ch. 250, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 26 of Ch. 250, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 9, 1963.

CHAPTER 21—TITLE ABSTRACTERS—REGULATION

Section 66-2104. Compensation of members of board—disposition of funds.
66-2106. Reports of board.

66-2104. (4139.4) Compensation of members of board—disposition of funds. Each member of the board shall receive a compensation of five dollars (\$5.00) per day for actual services while attending meetings or otherwise engaged upon business connected with the board, and shall receive ten cents (\$0.10) per mile for each mile actually traveled, and the further sum of five dollars (\$5.00) per day for expenses while absent from home upon business connected with the board.

All fees and moneys received under the provisions of this act shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the abstracters board of examiners.

History: En. Sec. 4, Ch. 105, L. 1931; amd. Sec. 124, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "which amount shall be paid upon verified vouchers after allowance by said board out of any funds in the hands of the state treasurer in the abstracters board fund" at the end of the first paragraph; deleted a first sentence of the second paragraph reading,

"And there is hereby established a fund to be known as the abstracters board fund"; substituted "the earmarked revenue fund for the use of the abstracters board of examiners" at the end of the section for "the abstracters board fund, to meet the expenses incurred in carrying out the provisions of this act"; and deleted from the end of the section a proviso reading, "provided, the expenses of said board shall not exceed the fees collected."

66-2106. (4139.6) Reports of board. Said board shall make a biennial report to the governor, which report shall contain a full statement of its receipts and disbursements for the preceding biennial term; also a full statement of its doings and proceedings and such recommendations as to it may seem proper for the better carrying out of the intents and purposes of this act.

History: En. Sec. 6, Ch. 105, L. 1931; amd. Sec. 125, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words

"which said report shall not be printed except as the expense of the fund herein provided for" from the end of the section.

CHAPTER 22—VETERINARY MEDICINE—REGULATION OF PRACTICE

Section 66-2203. Expenses and funds—records and reports.
66-2204. Applications for license to practice—examinations—fees.

66-2203. (3219) Expenses and funds—records and reports. Each member of the board shall be entitled to receive all necessary traveling

and subsistence expenses. The secretary-treasurer shall receive an additional salary to be fixed annually by the board and not to exceed five hundred dollars (\$500.00) per annum. The board shall require the secretary-treasurer to give bond in such sum and with such conditions as the board may from time to time direct. The board shall keep full and complete minutes of its proceedings and of its receipts and disbursements, and a full and accurate list of all persons licensed and registered by it, and such records shall be public records, and shall, at all times, be open to public inspection. All moneys received by the board shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of veterinary examiners. Said board shall, not later than July fifteenth of each year, submit to the governor a full and complete report of its proceedings during the twelve (12) months immediately preceding.

History: En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R. C. M. 1921; amd. Sec. 3, Ch. 90, L. 1955; amd. Sec. 126, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted from the end of the first sentence a proviso reading, "provided such expenses shall not exceed the amount in the treasury during any fiscal year"; and substituted the fifth sentence for two sentences reading, "The secretary-treasurer of said board shall be

the legal custodian of all moneys received for licenses or certificates of registration, as provided by this article, up to and including the sum of five thousand dollars (\$5,000.00). If, at any time, the amount of moneys received, after deducting such salaries and expenses, shall amount to more than five thousand dollars (\$5,000.00), the secretary-treasurer shall forward the amount in excess of five thousand dollars (\$5,000.00) to the treasurer of the state of Montana, and receive his official receipt for same."

66-2204. (3220) Applications for license to practice—examinations—fees. Any citizen of the United States who is over the age of twenty-one (21) years desiring to begin the practice of veterinary medicine or veterinary surgery in the state of Montana, or who shall desire to hold himself or herself out to the public as a practitioner of veterinary medicine or veterinary surgery, except as provided in section 66-2211, shall make application to said board of examiners for license so to do. Such application shall be upon a form furnished by said board, and shall be accompanied by satisfactory evidence of the good moral character of the applicant, and shall present evidence of his having graduated in and received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a photostatic copy of the diploma of said applicant shall be submitted to said board for inspection and verification, and such photostatic copy shall be and remain the property of the board. Every person applying to said board for license to practice shall pay to the board the fee of twenty-five dollars (\$25.00), which fee shall in no case be refunded. Said board shall by means of examination, either oral or written or practical, or such combination of oral or written or practical as the board may determine, ascertain the professional qualifications for license of all applicants under this act, except that investigation under reciprocity arrangements may replace examination for licensees from other states as provided by section 66-2208, and the board shall issue such license to all who are found upon such examination or investigation

to be in the judgment of said board competent to practice, and no such license shall be issued to any person who is not found by such examination or investigation to be competent.

Such examination shall be held in January and June of each year at a time and place or places specified by said board. Such examination shall cover theory and practice, materia medica and therapeutics, live-stock sanitation, surgery, and communicable diseases and such other subjects chosen by the board as are ordinarily included in the curriculum of a legally chartered school of veterinary medicine recognized and approved by the American veterinary medical association.

Said board shall consecutively number all applications received and note upon each the disposition made of it and preserve same for reference, and shall number consecutively all licenses issued; provided, that veterinarians who are at the time of the passage and approval of this act licensed and registered to practice veterinary medicine in the state of Montana, shall be entitled to a license without such examination.

All applicants must achieve a grade of seventy per cent (70%) in all subjects in order to obtain a license. An applicant who has failed an examination may apply to be re-examined at any subsequent examination, shall pay another application fee in the amount of twenty-five dollars (\$25.00), and shall take another complete examination in all subjects.

An applicant for examination hereunder may in the discretion of the board be given a temporary permit to practice veterinary medicine prior to taking the examination, provided such applicant is employed by and working under the supervision of and in the same office with a veterinarian licensed under this act; such temporary permit shall be valid only until the date of the next succeeding examination, and no longer, and under no circumstances shall the board issue a second temporary permit to the same person. A temporary permit shall not be issued to a person who has failed an examination given by the board.

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R. C. M. 1921; amd. Sec. 4, Ch. 90, L. 1955; amd. Sec. 127, Ch. 147, L. 1963. "and which shall become a part of the funds of the treasury of the board" at the end of the fourth sentence of the first paragraph.

Amendment

The 1963 amendment deleted the words

CHAPTER 23—ENGINEERS AND LAND SURVEYORS

Section 66-2333. Receipts and disbursements—secretary—assistants.

66-2333. Receipts and disbursements—secretary—assistants. The secretary of the board shall receive and account for all moneys derived under the provisions of this act, and shall pay the same monthly to the state treasurer, who shall deposit such moneys in the earmarked revenue fund for the use of the state board of registration for professional engineers and land surveyors. The secretary of the board shall give a surety bond to the state in such sum as the board may determine. The premium on said bond shall be regarded as a proper and necessary expense of the board. The secretary of the board shall receive such salary as the board

shall determine in addition to the compensation and expenses provided for in section 66-2329. The board may appoint an assistant secretary or executive secretary or may employ such clerical or other assistants as are necessary for the proper performance of its work.

History: En. Sec. 10, Ch. 150, L. 1957; amd. Sec. 123, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "deposit such moneys in the earmarked revenue fund for the use of the state board of registration for professional engineers and land surveyors" at the end of the first sentence for "keep such moneys in a separate fund to be known as the 'professional engineers' fund"; deleted the former second and third sentences reading, "Such fund shall be kept separate and apart from all other moneys in the treasury, and shall be paid out only by warrants drawn by the state auditor, upon claims filed and approved as required by law. All moneys in the 'professional engineers' fund' are hereby specifically appropriated for the use of the board"; de-

leted from the end of the present third sentence the words "and shall be paid out of the 'professional engineers' fund"; and deleted from the end of the section language reading, "and may make expenditures of this fund for any purpose which in the opinion of the board is reasonably necessary for the proper performance of its duties under this act, including the expenses of the board's delegates to annual conventions of, and membership dues to, the national council of state boards of engineering examiners. Under no circumstances shall the total amount of warrants issued by the state auditor in payment of the expenses and compensation provided for in this act exceed the amount of the examination and registration fees collected as herein provided."

CHAPTER 24—PLUMBERS

Section 66-2403. Board of plumbing examiners—appointment—terms—compensation—examination of applicants.

66-2407. Disposition of license fees.

66-2403. Board of plumbing examiners—appointment—terms—compensation—examination of applicants. Within sixty (60) days after this act becomes a law, the governor of the state of Montana shall appoint a board of plumbing examiners consisting of five members—one master plumber, one journeyman plumber, who shall be of legal age, residents of Montana for more than one year and shall have been at least five out of the last eight years, immediately preceding their appointment, duly licensed master or journeyman plumbers, one registered professional engineer, qualified in mechanical engineering, one member to be appointed at large as representative of the public who is not engaged in the business of installing or selling plumbing equipment, and the appointed representative of the Montana state board of health, who shall be a sanitary engineer and who shall be the secretary of the state board of plumbing examiners. The office of the engineer of the state board of health shall act as the office through which all business of the board shall be transacted. The appointed members of this board of plumbing examiners shall serve for a period of four years from the date of their appointment, providing however, the first board of plumbing examiners shall serve as follows: one member for one year, one member for two years, one member for three years and one member for four years and the governor in making the appointment shall designate the time that each member constituting the first board shall serve. Thereafter, upon the expiration of the term of office of each member of the board of plumbing examiners or

when a vacancy occurs, the governor shall make a new appointment for the unexpired term or for a period of four years. The journeyman plumber whose term would next expire after passage and approval of this act is hereby removed from said board and in his place and stead shall be installed said registered professional engineer, qualified in mechanical engineering. The members of the said board shall be entitled to a compensation of twenty dollars (\$20.00) per diem, each, for each and every day while actually engaged in the work of the board. Any applicant for a state license to work at the business of plumbing in this state shall be examined as to his qualifications by the board of examiners of plumbers for the state of Montana. It shall be the duty of the said board to examine each applicant for a state license as provided for in this act, to determine his qualifications and fitness for carrying on the business of a master plumber or journeyman plumber, and if the applicant successfully passes the examination as prescribed by the said board, then a state license shall be issued to such applicant for such license, authorizing him to engage in the business and occupation of a master plumber or journeyman plumber, as the case may be, which license, when issued, shall authorize the holder thereof to carry on the business of a master plumber or a journeyman plumber, as the case may be, in any city or town in the state of Montana.

History: En. Sec. 3, Ch. 203, L. 1949; amd. Sec. 16, Ch. 251, L. 1959; amd. Sec. 2, Ch. 185, L. 1961; amd. Sec. 143, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words "the compensation, however, to be paid from the revenue realized under the provisions of this act, but not otherwise" at the end of the sixth sentence.

66-2407. Disposition of license fees. All moneys paid for state license fees as provided for in this act shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the board of plumbing examiners.

History: En. Sec. 7, Ch. 203, L. 1949; amd. Sec. 144, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the words "deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the board of plumbing

examiners" for the words "placed in the custody of the state treasurer, who shall keep such sums in a distinct fund, and any moneys in such fund shall be applied in defraying any expenses incurred by the state board of examiners of plumbers in carrying out the provisions of this act" at the end of this section.

66-2418. Repealed.

Repeal

This section (Sec. 7, Ch. 251, L. 1959), relating to payment of expenses of the

board, was repealed by Sec. 242, Ch. 147, Laws 1963.

CHAPTER 25—PHYSICAL THERAPISTS PRACTICE ACT

Section 66-2503. Application for examination—examination fee.

66-2503. Application for examination—examination fee. Unless entitled to a license under section 66-2504 or 66-2505, a person who desires to be licensed as a physical therapist shall apply to the board, in writing, on a blank furnished by the board. He shall embody in that application

evidence under oath, satisfactory to the board of his possessing the qualifications preliminary to examination required by section 66-2502. He shall pay to the secretary of the board of medical examiners at the time of filing his application a fee of twenty-five dollars (\$25.00) which shall be deposited in the earmarked revenue fund for the use of the board of medical examiners. Anyone failing to pass the required examination shall be entitled to a second examination within six months without additional fee.

History: En. Sec. 3, Ch. 39, L. 1961;
amd. Sec. 133, Ch. 147, L. 1963.

Amendment

The 1963 amendment inserted the words "which shall be deposited in the earmarked revenue fund for the use of the

board of medical examiners" at the end of the third sentence and deleted a former fourth sentence which read: "This fee will become part of the board of medical examiners' fund and shall not be used or expended for any purpose other than as provided for in section 66-1009."

CHAPTER 26—WATER WELL CONTRACTOR'S LICENSE ACT

Section 66-2604. Water well contractor's examining board—members—terms—oath—~~seal—employees.~~

66-2605. Powers and duties of the board.

66-2606. Water well contractor's licenses.

66-2615. Completion of contracts by successor in interest of licensed contractor.

66-2602. Purpose of the act—definitions—exemptions.

History: En. Sec. 2, Ch. 176, L. 1961;
amd. Sec. 2, Ch. 234, L. 1963.

Compiler's Note

Section 2, Ch. 234, Laws 1963, purported to amend this section, but it made no change.

66-2604. Water well contractor's examining board—members—terms—oath—~~seal—employees.~~ (1) to (4). * * * [Same as parent volume.]

(5) The board may, in its discretion, employ a secretary and such other persons as may be necessary to perform the duties of the board, either upon a part-time basis or upon a full-time basis. The appointed member of the board shall receive, as compensation for his services, the sum of fifteen dollars (\$15.00) per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the places at which he shall perform such duties, together with mileage and per diem expenses as provided by law. The state engineer and the director of environmental sanitation of the state board of health of the state of Montana shall receive no extra compensation for their services as members of the board.

History: En. Sec. 4, Ch. 176, L. 1961;
amd. Sec. 152, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted from subd. (5) a former second sentence which read: "Payment for any such services

shall be made out of the hereinafter designated fund, and no other" and a former fourth sentence which read: "Such payments to the appointed member of compensation, mileage and per diem expenses shall be made out of the hereinafter designated fund, and no other."

66-2605. Powers and duties of the board. (1) to (4). * * * [Same as parent volume.] ✓

(5) Within one hundred twenty (120) days of the effective date of this act, the board shall organize and conduct a public hearing for the

purpose of adopting reasonable rules and regulations for the future conduct of its business. Such hearing shall be had only after at least ten (10) days' printed notice of the same has been given, announcing the hearing, the time, the place and the purpose therefor. Publication shall be made in at least five (5) daily newspapers in this state. Following such hearing, said rules and regulations shall be adopted and compiled in printed form for distribution to interested persons, for which the board may charge a fee; and sums realized from such sales shall be deposited with the treasurer of this state in the earmarked revenue fund for the use of the water well contractor's examining board.

(6). * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 176, L. 1961; amd. Sec. 153, Ch. 147, L. 1963; amd. Sec. 3, Ch. 234, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 147 and once by Ch. 234. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments.

Amendments

Chapter 147, Laws 1963, substituted "the earmarked revenue fund for the use of the water well contractor's examining board" at the end of subsection (5) for language reading, "a special fund to be designated as the 'Water Well Con-

tractor's Examining Board Fund,' and the funds therein shall be used for the purpose of paying expenses of the board, and for no other purpose. All sums expended from this fund shall be approved as provided by law. Upon termination of this board, any balance remaining in said fund shall be paid over to the general fund of the state of Montana. All accounts and expenditures of said board shall be certified by the board, approved by the board of examiners of the state of Montana, and paid by the state treasurer upon warrants drawn by the state auditor out of said fund."

Chapter 234, Laws 1963, substituted "for which the board may charge a fee" in the fourth sentence of subsection (5) for "The board shall charge a fee of fifty cents (50¢) per copy"; and made minor changes in punctuation.

66-2606. Water well contractor's licenses. Any person desiring to engage in the drilling, making or construction of one (1) or more wells for underground water in this state shall first file an application with the board for a contractor's license, setting out his qualifications therefor, the equipment proposed to be used in such contracting, and such other business as may be required by the board, all upon forms to be adopted by the board. The board shall charge a fee of one hundred dollars (\$100.00) for the filing of such application by any person, and it shall not act upon any application until such fee has been paid. All fees collected hereunder shall be deposited with the state treasurer in the earmarked revenue fund for the use of the water well contractor's examining board. A license to construct water wells shall be issued to any applicant if, in the opinion of the board, such applicant is qualified to conduct water well construction operations. In the granting of such licenses, the board shall have due regard for the interest of the state of Montana in the protection of its underground waters. Applicants for licenses hereunder who have engaged in the business of water well drilling or construction for a period of more than three (3) years prior to the effective date of this act, and who have been bona fide residents of the state of Montana for more than one (1) year preceding the date of application, may, at any time within one (1) year

after the effective date of this act make application for license hereunder and payment of the fee of one hundred dollars (\$100.00), as herein provided, and the board shall issue a license to any such applicant without examination, when he shall submit evidence, under oath, satisfactory to the board that he is of good character, that he was engaged in the occupation of water well contractor at the time this act became effective, and that his work as such is satisfactory to the board. All other applicants shall be subject to examination as hereinafter provided.

A temporary water well contractor's license may be issued to a person who, by evidence satisfactory to the board, is found to possess the qualifications numbered (1) through (6) set out in section 66-2608, R.C.M., 1947, and who shall have applied for license as provided by this act. Such temporary license shall entitle the holder thereof to engage in the business of drilling, making or construction of water wells until the time of the next ensuing examination given by the board. Upon such applicant's successfully meeting the board's requirements upon such examination, the temporary license shall be returned to the board and a regular license issued. Should the holder of a temporary license fail, after notice of the holding of such examination, to submit himself for examination or to meet the board's requirements, such temporary license shall expire and be returned to the board for cancellation.

History: En. Sec. 6, Ch. 176, L. 1961; amd. Sec. 154, Ch. 147, L. 1963; amd. Sec. 4, Ch. 234, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 147 and once by Ch. 234. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments.

Amendments

Chapter 147, Laws 1963, substituted "earmarked revenue fund for the use of the water well contractor's examining board" for "water well contractor's examining board fund, and shall be used to pay expenses of the board as set forth in this act, and for no other purpose" at the end of the third sentence.

Chapter 234, Laws 1963, added the second paragraph.

66-2615. Completion of contracts by successor in interest of licensed contractor. Upon the transfer, by operation of law, to the successor in interest of a licensed water well contractor's rights under a contract or agreement for the drilling or making of a water well or wells, the successor in interest to such rights shall be permitted to engage in the business of drilling, making or construction of water wells to the extent necessary to perform the obligations of said licensed water well contractor under such contract or agreement, provided that such engagement in business shall be under the supervision of a licensed water well contractor.

History: En. Sec. 1, Ch. 234, L. 1963.

Title of Act

An act to permit the successor in interest to the rights of a licensed water well contractor under a contract for water well construction to engage in the water well construction business to the extent necessary to fulfill said contractor's obligations and providing conditions therefor; amending section 66-2602, R.

C.M., 1947, as amended, to permit compliance with the examination and licensing provisions of the Montana Water Well Contractor's License Act by any one member of a firm, copartnership or association or the manager of a corporation; amending section 66-2605, R.C.M., 1947, as amended, to make permissive the exacting of a fee for copies of board rules and regulations; and amending section 66-2606, R.C.M., 1947, as amended, to per-

mit the temporary licensing of a water competency and providing conditions well contractor prior to examination for therefor.

CHAPTER 27—MORTICIANS AND FUNERAL DIRECTORS

- Section 66-2701. Definitions.
 66-2702. State board of morticians—appointment and term of office.
 66-2703. Officers of board—compensation of members.
 66-2704. Meetings—quorum—rules and regulations.
 66-2705. Employees of board.
 66-2706. Disposition of fees.
 66-2707. Funeral directing.
 66-2708. Embalming and mortuary science—qualifications for mortician's license.
 66-2709. Examination for morticians.
 66-2710. Intern mortician's license.
 66-2711. Mortician's license—fee and renewal.
 66-2712. Reciprocity.
 66-2713. Operation and licensing of mortuaries.
 66-2714. Refusal to grant, suspension and revocation of mortician's and funeral director's license.
 66-2715. Hearing and notice—revocation and suspension of licenses.
 66-2716. Appeal.
 66-2717. Penalty provision.

66-2701. Definitions. As used in this act

- (1) "Board" means the state board of morticians.
- (2) "Funeral directing" includes
 - (a) supervising funerals,
 - (b) preparing dead bodies for burial other than by embalming,
 - (c) maintaining a mortuary for the preparation, disposition or care of dead human bodies, and
 - (d) the holding out to the public that one is a funeral director or undertaker.

(3) "Embalming" means the preservation and disinfection of the dead human body by application of chemicals externally, internally, or both.

(4) "Mortuary science" is the profession or practice of funeral directing and embalming.

(5) A "mortician" is a person licensed under the laws of the state of Montana to practice mortuary science.

(6) A "mortuary" is a place of business used for the care and preparation for burial or transportation of dead human bodies, or a place where a person represents himself as engaged in the profession of mortuary science or funeral directing.

History: En. Sec. 1, Ch. 41, L. 1963.

Title of Act

An act regulating the operation of mortuaries and the practice of mortuary science and funeral directing; establishing

a state board of morticians; amending sections 69-119, 69-2306, 69-2309, 69-2310, and 9-604, R.C.M. 1947; and repealing sections 82-701, 82-702, 82-703, 82-704, 82-705, 82-706, 82-707, 82-708, 82-709, 82-710, and 82-711, R.C.M. 1947.

66-2702. State board of morticians—appointment and term of office. There is in state government a state board of morticians consisting of five licensed morticians appointed by the governor with the advice and consent of the senate. The original members of the board shall be appointed for one (1), two (2), three (3), four (4), and five (5) year terms,

An appointment to replace a member whose term has expired shall be for five (5) years. An appointment to replace a member whose term has not expired shall be for the remainder of the term.

History: En. Sec. 2, Ch. 41, L. 1963.

66-2703. Officers of board—compensation of members. The board shall elect a chairman, a secretary-treasurer, and any other necessary officers. Board members shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in attending meetings or in the discharge of other board duties. In addition to such reimbursement the secretary-treasurer may be paid a salary set by the board.

History: En. Sec. 3, Ch. 41, L. 1963.

66-2704. Meetings—quorum—rules and regulations. The board shall hold such meetings as may be necessary. Three members constitute a quorum for the transaction of business. The board may adopt and enforce rules and regulations to carry out the purposes of this act.

History: En. Sec. 4, Ch. 41, L. 1963.

66-2705. Employees of board. The board may employ whatever temporary or permanent personnel are necessary to carry out the provisions of this act.

History: En. Sec. 5, Ch. 41, L. 1963.

66-2706. Disposition of fees. All moneys collected by the board shall be deposited with the state treasury and shall be used only for the purposes of defraying the necessary expenses of administering this act.

History: En. Sec. 6, Ch. 41, L. 1963.

66-2707. Funeral directing. The practice of funeral directing is prohibited by anyone who does not hold a funeral director's license or a mortician's license issued by the board. A person licensed to practice funeral directing on June 1, 1963 is entitled to an annual renewal of his license upon payment of an annual license fee to the board on July 1 of each year. The amount of the annual license fee shall be set by the board but shall not exceed five dollars (\$5). A funeral director's license shall not be issued to a person who is not licensed by the board of embalmers and funeral directors to practice funeral directing on June 1, 1963.

History: En. Sec. 7, Ch. 41, L. 1963.

66-2708. Embalming and mortuary science—qualifications for mortician's license. The practice of embalming or mortuary science is prohibited by anyone who does not hold a mortician's license issued by the board. To qualify for a mortician's license a person must

(1) Be at least twenty-one (21) years of age.

(2) Be of good moral character.

(3) Have graduated from an accredited college of mortuary science, and have satisfactorily completed two (2) academic years at an accredited college or university. This subsection shall not apply to a person who is enrolled in an accredited college of mortuary science on the effective date of this act.

(4) Pass an examination prescribed by the board.

(5) Serve a one (1) year internship under the supervision of a mortician in a licensed mortuary in Montana.

History: En. Sec. 8, Ch. 41, L. 1963.

66-2709. Examination for morticians. A person possessing the necessary qualifications may apply to the board for a license and upon payment of an application fee of twenty-five [dollars] (\$25.00), may take the examination prescribed by the board. The examination shall be held on the second Wednesday of July each year in Helena and at such other times and places as the board deems necessary.

History: En. Sec. 9, Ch. 41, L. 1963.

Compiler's Note

The compiler has inserted the bracketed word "dollars."

66-2710. Intern mortician's license. An applicant who passes the examination, upon payment of a license fee of three dollars (\$3.00), shall be granted an intern mortician's license to practice mortuary science under the supervision of a mortician in a licensed mortuary in Montana, and upon completion of one year's internship and payment of the annual license fee, may apply for and receive a mortician's license.

History: En. Sec. 10, Ch. 41, L. 1963.

66-2711. Mortician's license—fee and renewal. (1) The annual license fee for a mortician's license must be in the hands of the secretary-treasurer or postmarked before July 1 of the assessment year. The amount of the annual license fee shall be set by the board but shall not exceed ten dollars (\$10.00). A person holding a license issued by the board of embalmers and funeral directors to practice embalming on June 1, 1963 may, within two (2) years of such date, apply for and receive a mortician's license upon payment of the license fee.

(2) Failure to pay the annual license fee shall result in automatic suspension of the license. The license may be reinstated by the payment of all unpaid license fees plus a penalty of twenty-five dollars (\$25.00).

History: En. Sec. 11, Ch. 41, L. 1963.

66-2712. Reciprocity. If a person holding a license entitling him to practice mortuary science in another state applies for a Montana mortician's license, the board may waive the examination and internship requirements if it finds that the standards and requirements of the state in which the applicant is licensed are equal to or exceed those of Montana and if such state has a reciprocal agreement with Montana.

History: En. Sec. 12, Ch. 41, L. 1963.

66-2713. Operation and licensing of mortuaries. (1) An operating mortuary must be licensed by the board. The license must be displayed in a conspicuous place. The board may adopt rules and regulations prescribing reasonable standards for such establishments, including minimum requirements for drainage, ventilation, and instruments, and may inspect the premises of a mortuary establishment to determine if such rules and regulations are complied with. Such inspection or inspections shall be made at the discretion of the board, and may be without notice.

(2) The board may charge the operator an inspection fee to be set at the discretion of the board, but not to exceed twenty-five dollars (\$25.00) per year.

(3) A mortuary license may be suspended or revoked upon proof of

(a) noncompliance of board rules (of) regulations relating to the operation of mortuaries,

(b) violation of any of the laws, rules, or regulations of the state, district, or local board of health governing the disposition of dead human bodies, or,

(c) violation of any rule of the board regulating the practice of mortuary science and funeral directing.

(4) The operation of a mortuary is prohibited by anyone not holding a mortician's or funeral director's license.

History: En. Sec. 13, Ch. 41, L. 1963.

66-2714. Refusal to grant, suspension and revocation of mortician's and funeral director's license. The board may refuse to grant, may suspend, or may revoke a mortician's or funeral director's license for any of the following reasons:

(1) If the applicant or licensee obtained the license by fraud or misrepresentation, either in the application for the license, or in passing the examination.

(2) If the applicant or licensee has been convicted of a felony.

(3) If the applicant or licensee has violated any section of this act or any rule or regulation of the state, district, or local board of health governing the disposition of dead human bodies, or any rule of the board regulating the professions of mortuary science or funeral directing, or the operation of a mortuary.

(4) If the licensee has participated in any scheme in the nature of a burial association or burial certificate plan which does not properly protect the rights of the public, or where there is any element of fraud, or where there is contained any agreement or provision that deprives heirs, next of kin, or any other authorized person freedom of choice as to the services or merchandise used in connection with a funeral, or the freedom of choice as to which funeral directors or morticians shall be employed.

History: En. Sec. 14, Ch. 41, L. 1963.

66-2715. Hearing and notice—revocation and suspension of licenses. No action to suspend, revoke, or cancel a license shall be taken by the board until the accused has been furnished, at least thirty (30) days prior to the date of the hearing, with a statement of the charges against him and notice of the time and place of hearing the charges. If, upon the hearing, the board finds the charges true, it may revoke or suspend the license of the accused person. A stenographic report of each proceeding to revoke or suspend the license shall be made at the expense of the board and a transcript kept in its files. A copy of the transcript shall be furnished to the person so charged and accused.

History: En. Sec. 15, Ch. 41, L. 1963.

66-2716. Appeal. A person who has been refused a license or whose license has been revoked or suspended, may file with the secretary of the board, within thirty (30) days after the decision of the board, a written notice of appeal to any district court of the state of Montana. The court is limited in its proceedings to a determination of whether the action of the board was in accord or consistent with this act or the constitution of this state, or whether the action of the board was arbitrary or an abuse of discretion. When a notice of appeal is filed the secretary of the board shall transmit to the clerk of the court the record of the board's proceedings. The judgment of a district court of the state of Montana, may, in the manner provided for appeal of civil action, be reviewed upon proceedings on appeal in the supreme court.

History: En. Sec. 16, Ch. 41, L. 1963.

66-2717. Penalty provision. A person who violates this act is guilty of a misdemeanor.

History: En. Sec. 17, Ch. 41, L. 1963.

TITLE 67—PROPERTY

- Chapter 13. Acquisition of property by accession—fixtures—lands, etc., 67-1301.
14. Acquisition of personal property by accession—union of parts, 67-1410.
16. Transfer of real property—method and effect, 67-1602.1.
20. Corner Recordation Act, 67-2001 to 67-2010.
21. Sale or lease of subdivided lands, 67-2101 to 67-2116.
22. Disposition of unclaimed property, 67-2201 to 67-2230.

CHAPTER 3—OWNERSHIP OF PROPERTY AND INTERESTS THEREIN

67-308. (6680) Joint interest defined.

Shares of Stock

Stocks issued in the names of deceased and his children as joint tenants with the right of survivorship and not as tenants in common, deposited in safety deposit boxes rented in the names of the owners who had inspected the stock in the safety

deposit boxes and included dividends from stocks in individual income tax returns, were delivered by the donor to the donees and did not belong to deceased at the time of his death so as to be a part of his estate. *Marans v. Newland*, — M —, 374 P 2d 721, 735.

CHAPTER 12—ACQUISITION OF PROPERTY BY OCCUPANCY

67-1203. (6818) Prescription.

Easement by Prescription

Title to an easement acquired by prescription is as effective as though evidenced by a deed. *Scott v. Weinheimer*, — M —, 374 P 2d 91, 94.

To establish the existence of an easement by prescription, the party so claiming must show open, notorious, exclusive, adverse, continuous and uninterrupted use of the easement claimed for the full statutory period. *Scott v. Weinheimer*, — M —, 374 P 2d 91, 95.

Plaintiffs, who acquired prescriptive easement in road across property of defendants by use for thirty-five years before defendants acquired title to the land

and attempted to obstruct use, were entitled to enjoin defendants from interfering with use of right of way over road. *Scott v. Weinheimer*, — M —, 374 P 2d 91, 96.

Water Rights

Defendants failed to establish a prescriptive water right regardless of priority of rights, where depositions which were self-serving declarations were not admissible as ancient documents or public records as exceptions to hearsay rule and no other satisfactory proof of possession or use of the water was shown. *King v. Schultz*, — M —, 375 P 2d 108, 110.

CHAPTER 13—ACQUISITION OF PROPERTY BY ACCESSION—FIXTURES—ISLANDS, ETC.

Section 67-1301. Fixtures.

67-1301. (6819) Fixtures. When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed, except as provided in section 67-1307 and in the Uniform Commercial Code, belongs to the owner of the land, unless he chooses to require the former to remove it. [Effective January 1, 1965.]

History: En. Sec. 1400, Civ. C. 1895; re-en. Sec. 4572, Rev. C. 1907; re-en. Sec. 6819, R. C. M. 1921; amd. Sec. 11-146, Ch. 264, L. 1963. Cal. Civ. C. Sec. 1013. Based on Field Civ. C. Sec. 442.

Amendment

The 1963 amendment inserted "and in the Uniform Commercial Code."

CHAPTER 14—ACQUISITION OF PERSONAL PROPERTY BY ACCESSION
—UNION OF PARTS

Section 67-1410. Uniform Commercial Code—applicability.

67-1410. Uniform Commercial Code—applicability. The provisions of this chapter apply only to the extent not otherwise provided for in the Uniform Commercial Code. [Effective January 1, 1965.]

History: En. 67-1410 by Sec. 11-147, Ch. 264, L. 1963.

CHAPTER 16—TRANSFER OF REAL PROPERTY—METHOD AND EFFECT

Section 67-1602.1. Joint tenancy created by direct conveyance.

67-1602.1. Joint tenancy created by direct conveyance. A joint tenancy as to any interest in real property may be established by the owner thereof, by designating in the instrument of conveyance or transfer, the names of such joint tenants including his own, without the necessity of any transfer or conveyance to or through a third person.

History: En. Sec. 1, Ch. 208, L. 1963.

Title of Act

An act to provide that a joint tenancy,

ownership of property may be established by conveyance or transfer of such property without the necessity of transfer to or through any third person.

CHAPTER 17—TRANSFER OF PERSONAL PROPERTY—
MODES OF TRANSFER**67-1702 to 67-1704. (6878 to 6880) Repealed.****Repeal**

These sections (Secs. 1531, 1540, 1541, Civ. C. 1895), relating to the transfer of

personal property by sale, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

67-1706. (6882) Gifts defined.**Shares of Stock**

Stocks which had been purchased by the deceased with his own funds and had been issued jointly to him and his son and daughter with right of survivorship and to son and daughter as tenants in common, deposited in safety deposit boxes rented in the names of the owners who

had inspected the stock in the safety deposit boxes and included dividends from stocks in individual income tax returns, were delivered by the donor to the donees and did not belong to deceased at the time of his death so as to be a part of his estate. Marans v. Newland, — M —, 374 P 2d 721, 735.

67-1707. (6883) Gift—how made.**References**

Cited in Marans v. Newland, — M —, 374 P 2d 721, 722, 735.

Survey and Co-ordinates

CHAPTER 20—~~CORNER RECORDATION ACT~~

- Section 67-2001. Citation of act.
 67-2002. Purpose of act.
 67-2003. Definitions.
 67-2004. Filing of corner record required.
 67-2005. Filing permitted as to any property corner.
 67-2006. Form to be prescribed by board.
 67-2007. County clerk shall receive, file and cross reference.
 67-2008. Surveyor must rehabilitate monuments.
 67-2009. Corner records to be certified.
 67-2010. Filing of corner records on locations made before effective date.

67-2001. Citation of act. This act may be cited as the "Corner Rec-
ordination Act of Montana."

History: En. Sec. 1, Ch. 202, L. 1963.

Title of Act

An act requiring and providing for filing of corner records containing information on public land survey corners by a licensed land surveyor; defining terms; providing for filing and filing fees, and making records available to the public;

allowing licensed land surveyors to file information on any property corner; requiring surveyors to reconstruct and perpetuate monuments of public land survey corners; directing that unconstitutionality of a part of this act shall not affect or impair the remainder, and repealing all acts and parts of acts inconsistent herewith.

67-2002. Purpose of act. It is the purpose of this act to protect and perpetuate public land survey corners and information concerning the location of such corners by requiring the systematic establishment of monuments and recording of information concerning the marking of the location of such public land survey corners and to allow the systematic location of other property corners, thereby providing for property security and a coherent system of property location and identification of owner-ships; and thereby eliminating the repeated necessity for re-establishment and relocations of such corners where once they are established and located.

History: En. Sec. 2, Ch. 202, L. 1963.

67-2003. Definitions. Except where the context indicates a different meaning, terms used in this act shall be defined as follows:

(1) A "property corner" is a geographic point on the surface of the earth, and is on, a part of, and controls a property line.

(2) A "property controlling corner" for a property is a public land survey corner, or any property corner, which does not lie on a property line of the property in question, but which controls the location of one or more of the property corners of the property in question.

(3) A "public land survey corner" is any corner actually established and monumented in an original survey or resurvey used as a basis of legal description for issuing a patent for the land to a private person from the United States government.

(4) A "corner," unless otherwise qualified, means a property corner, or a property controlling corner, or a public land survey corner, or any combination of these.

(5) An "accessory to a corner" is any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects.

(6) A "monument" is an accessory that is presumed to occupy the exact position of a corner.

(7) A "reference monument" is a special monument that does not occupy the same geographical position as the corner itself, but whose spatial relationship to the corner is recorded, and which serves to witness the corner.

(8) A "registered surveyor" is a surveyor who is registered to practice land surveying under the Montana Professional Engineers Registration

Act and has a paid up license for that calendar year, or who is authorized under the Montana Professional Engineers Registration Act to practice land surveying.

(9) The "board" is the state board of registration for professional engineers and land surveyors.

History: En. Sec. 3, Ch. 202, L. 1963.

67-2004. Filing of corner record required. A surveyor shall complete, sign, stamp with his seal and file with the county clerk and recorder of the county where the corner is situated, a written record of corner establishment or restoration to be known as a "corner record" for every public land survey corner and accessory to such corner which is established, re-established, monumented, re-monumented, restored, rehabilitated, perpetuated or used as control in any survey by such surveyor, and within ninety (90) days thereafter, unless the corner and its accessories are substantially as described in an existing corner record filed in accordance with the provisions of this act.

History: En. Sec. 4, Ch. 202, L. 1963.

67-2005. Filing permitted as to any property corner. A surveyor may file such corner record as to any property corner, property controlling corner, reference monument or accessory to a corner.

History: En. Sec. 5, Ch. 202, L. 1963.

67-2006. Form to be prescribed by board. The board shall by regulation provide and prescribe the information which shall be necessary to be included in the corner record and the board shall prescribe the form in which such corner record shall be presented and filed.

History: En. Sec. 6, Ch. 202, L. 1963.

67-2007. County clerk shall receive, file and cross reference. (1) The county clerk and recorder of the county containing the corner shall receive the completed corner record and preserve it in a hardbound book. The books shall be numbered in numerical order as filled.

(2) The clerk shall number the forms in numerical order as they are filed.

(3) The book and page number in which the said corner record is filed shall be placed by the clerk near that same corner on a cross index plat which the clerk shall provide for such a purpose.

(4) The county clerk and recorder shall make these records available for public inspection during all usual office hours.

(5) For purposes of determining the filing fee hereunder, the corner record shall be considered as a similar service to recording a townsite map of one (1) lot.

History: En. Sec. 7, Ch. 202, L. 1963.

67-2008. Surveyor must rehabilitate monuments. In every case where a corner record of a public land survey corner is required to be filed under the provisions of this act, the surveyor must reconstruct or rehabilitate the monument of such corner, and accessories to such corner, so that the same shall be left by him in such physical condition that it remains as

permanent a monument as is reasonably possible and so that the same may be reasonably expected to be located with facility at all times in the future.

History: En. Sec. 8, Ch. 202, L. 1963.

67-2009. Corner records to be certified. No corner record shall be filed unless the same is signed by a registered surveyor and stamped with his seal, or in the case of an agency of the United States government or the state of Montana the certificate may be signed by the survey party chief, making the survey and approved, signed and sealed by the registered surveyor in responsible charge of the agency.

History: En. Sec. 9, Ch. 202, L. 1963.

67-2010. Filing of corner records on locations made before effective date. Corner records may be filed concerning corners established, re-established or restored before the effective date of this act.

History: En. Sec. 10, Ch. 202, L. 1963.

Separability Clause

Section 11 of Ch. 202, Laws 1963 read "Severability of provisions. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is

invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 12 of Ch. 202, Laws 1963 repealed all acts and parts of acts inconsistent therewith.

CHAPTER 21—SALE OR LEASE OF SUBDIVIDED LANDS

- Section 67-2101. Definition of terms.
 67-2102. Rules and regulations.
 67-2103. Notice of intention to offer subdivided lands—contents of notice.
 67-2104. Fee for filing of notice of intention.
 67-2105. Additional information required by commissioner.
 67-2106. Fee for filing of questionnaire—disposition of fees.
 67-2107. Investigation of subdivisions—powers of commissioner.
 67-2108. Findings not to be used in advertising.
 67-2109. Blanket encumbrance defined.
 67-2110. Required provisions for protection of purchasers and lessees.
 67-2111. Contracts for sale of real property in subdivisions—required contents.
 67-2112. Notice of multiple sales or leases to one purchaser or lessee.
 67-2113. Inspection of records by commissioner—notice of change of address or change of depository.
 67-2114. Orders to desist and refrain—prohibition of sales and leases—hearings.
 67-2115. Accrual of cause of action for violation.
 67-2116. Misdemeanors enumerated.

67-2101. Definition of terms. The word "subdivision" and "subdivided lands" as used in this act shall mean any tract of land which is hereafter divided into five (5) or more parcels, any parcel of which is less than five (5) acres in size, and which is offered for sale or lease outside the state of Montana.

History: En. Sec. 1, Ch. 191, L. 1963.

Title of Act

An act defining "subdivision" and "subdivided lands"; providing for the reg-

ulation, supervision and control of subdivisions by the state real estate commissioner and defining his duties and powers relative thereto; and providing a penalty for the violation of this act.

67-2102. Rules and regulations. The state real estate commissioner hereafter referred to as the "commissioner" may make and adopt such rules and regulations as are reasonably necessary for the enforcement of this act.

History: En. Sec. 2, Ch. 191, L. 1963.

67-2103. Notice of intention to offer subdivided lands—contents of notice. Prior to the time when subdivided lands are to be offered for sale or lease outside the state of Montana, the owner, his agent or subdivider shall notify the state real estate commissioner in writing of his intention to sell or lease such offering.

The notice of intention shall contain the following information.

- (a) The name and address of the owner.
- (b) The name and address of the subdivider.
- (c) The legal description and area of lands, together with a map showing the layout proposed and relation to existing streets or roads.
- (d) A true statement of the conditions of the title to the land, particularly including all encumbrances thereon.
- (e) A true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any and all forms of conveyance intended to be used.
- (f) A true statement of the provision for legal access, sewage disposal, and public utilities in the proposed subdivision, including water, electricity, gas and telephone facilities.
- (g) Copies of any and all advertising, information, promotion brochures or similar material depicting the existing property or as it is to exist, which might cause or tend to induce purchase of the said property, or an interest therein, when said material is or might be circulated outside of this state.
- (h) Such other information as the owner, his agent or subdivider, may desire to present.

History: En. Sec. 3, Ch. 191, L. 1963.

67-2104. Fee for filing of notice of intention. A filing fee of fifty dollars (\$50) shall accompany the notice of intention provided for in section 3 [67-2103] of this act.

History: En. Sec. 4, Ch. 191, L. 1963.

67-2105. Additional information required by commissioner. After receiving the notice of intention, the commissioner may require such additional information concerning the project as he deems necessary, for which purpose he may prepare a questionnaire for the owner, his agent or subdivider, to answer.

History: En. Sec. 5, Ch. 191, L. 1963.

67-2106. Fee for filing of questionnaire—disposition of fees. The questionnaire as provided for in section 5 [67-2105] of this act shall be accompanied by a filing fee of one hundred dollars (\$100). All fees and charges provided for by this act shall be paid to the commissioner and by him deposited with the state treasurer. The state treasurer shall place

five per cent (5%) of all such fees and charges in the general fund and ninety-five per cent (95%) of all such fees and charges in the earmarked revenue fund. Fees deposited in the earmarked revenue fund may be used to pay all claims for expense incurred in the administration of this act when such claims have been approved as provided by law.

History: En. Sec. 6, Ch. 191, L. 1963.

67-2107. Investigation of subdivisions—powers of commissioner. The state real estate commissioner may investigate any subdivision being offered for sale or lease under the provisions of this act. For the purpose of such investigation, the commissioner may:

1. Use and rely upon any relevant information or data concerning a subdivision obtained by it from the federal housing administration, the United States veterans administration, or any other agency having comparable duties and functions in relation to subdivisions or property therein.

2. Require reports prepared by competent authorities as to any hazard to which the subdivision may be subject or any factor which might affect the value or utility of lots or parcels within the subdivision.

3. Require evidence of compliance with the requirements of appropriate authorities.

4. Require an inspection of the subdivision to be made.

History: En. Sec. 7, Ch. 191, L. 1963.

67-2108. Findings not to be used in advertising. It shall be unlawful for any person to incorporate in any advertising material or use for any advertising purposes the results or findings of the commissioner as provided for in this act.

History: En. Sec. 8, Ch. 191, L. 1963.

67-2109. Blanket encumbrance defined. For the purpose of this act, a blanket encumbrance shall be considered to mean a trust deed or mortgage or any other lien or encumbrance, mechanics' lien or otherwise, securing or evidencing the payment of money and affecting land to be subdivided or affecting more than one lot or parcel of subdivided land, or an agreement affecting more than one such lot or parcel by which the owner or subdivider holds said subdivision under an option, contract to sell, or trust agreement.

History: En. Sec. 9, Ch. 191, L. 1963.

67-2110. Required provisions for protection of purchasers and lessees. It shall be unlawful for the owner or subdivider to offer to sell or lease or to sell or lease lots or parcels within a subdivision to persons residing out of the state of Montana unless one of the following conditions is complied with:

- (a) All sums paid or advanced by purchasers shall be impounded in an escrow or other depository acceptable to the state real estate commissioner until: 1. The title or other interest contracted for whether it be title of record, equitable or other interest, is delivered to such purchaser or lessee and until: 2. A proper release is obtained from any such blanket encumbrance, or: 3. Either the owner, subdivider, pur-

chaser or lessee defaults in his undertaking, in which event the moneys shall be paid to the party who is not in default and is entitled thereto.

(b) The title to the subdivision is to be held in trust under an agreement of trust acceptable to the commissioner until a proper release from such blanket encumbrance is obtained and title or other interest contracted for is delivered to such purchaser or lessee.

(c) A bond in the amount of twenty-five hundred dollars (\$2,500) to the state of Montana is furnished to the state real estate commissioner for the benefit and protection of purchasers or lessees of such lots or parcels, in such amount and subject to such terms as may be approved by the commissioner, who shall provide for the return of moneys paid or advanced by any purchaser or lessee, for or on account of purchase or lease of any such lot or parcel if the interest contracted for is not delivered or a proper release from such blanket encumbrance is not obtained; provided, however, that if such purchaser or lessee, by reason of default, is not entitled to the return of such moneys, or any portion thereof, then such bond shall be exonerated to the extent of the amount of such moneys to which such purchaser or lessee is not entitled.

History: En. Sec. 10, Ch. 191, L. 1963.

67-2111. Contracts for sale of real property in subdivisions—required contents. Every sales contract relating to the purchase of real property in a subdivision subject to the provisions of this act, shall clearly set forth the legal description of the property, the principal amount of the blanket encumbrances outstanding at the date of the contract, and the terms of the contract.

History: En. Sec. 11, Ch. 191, L. 1963.

67-2112. Notice of multiple sales or leases to one purchaser or lessee. When five or more lots or parcels within a subdivision subject to the provisions of this act, are optioned, leased or sold to another, or, when an interest therein is acquired by one owner, lessee or optionee, the state real estate commissioner shall be notified by the parties to the transaction.

History: En. Sec. 12, Ch. 191, L. 1963.

67-2113. Inspection of records by commissioner—notice of change of address or change of depository. Records of the sale or lease of parcels within a subdivision subject to the provisions of this act, shall be subject to inspection by the state real estate commissioner and the commissioner shall be notified of any change of address affecting the location of the owner's, subdivider's or agent's records or of any change in depository for the impounding of purchasers' money in accordance with the provisions herein.

History: En. Sec. 13, Ch. 191, L. 1963.

67-2114. Orders to desist and refrain—prohibition of sales and leases—hearings. Whenever in the opinion of the state real estate commissioner any person has or is violating, or is about to violate, any of the provisions of this act, the commissioner may order the person to desist and refrain

from doing so, or, if an examination of the project shows that the sale or lease would constitute misrepresentation to, or deceit or fraud of, the purchasers or lessees of lots or parcels in a subdivision, the commissioner may issue an order prohibiting the sale or lease, or either, of the property in this state. If, after such an order is made, a request for a hearing by the commissioner is filed in writing and a hearing is not held within sixty (60) days thereafter, the order is rescinded.

The hearing upon the cease, desist and refrain order shall be held in the same manner and under the same requirements and conditions as is provided in section 66-1917, Revised Codes of Montana, 1947.

History: En. Sec. 14, Ch. 191, L. 1963.

67-2115. Accrual of cause of action for violation. For the purpose of calculating the period of any applicable statute of limitations in any action or proceeding, either civil or criminal involving any violation of this act, the cause of action shall be deemed to have accrued not earlier than the time of recording with the county recorder of the county in which the property sold or leased in violation of this act and which describes a lot or parcel so wrongfully sold or leased.

This section does not prohibit the maintenance of such action at any time during the recording of such instruments.

History: En. Sec. 15, Ch. 191, L. 1963.

67-2116. Misdemeanors enumerated. The following acts are misdemeanors:

(a) The willful violation or failure to comply with any of the provisions of this act.

(b) The willful violation, failure, omission or neglect to obey, observe or comply with any order, permit, decision, demand or requirement of the state real estate commissioner.

(c) The offering for sale or lease as an agent, salesman, or broker for a subdivider, developer, or owner or subdivided lands or a subdivision, wherever situated, which is being offered for sale outside the state of Montana without first complying with the provisions of this act.

(d) The advertising for sale or lease in this state of a parcel in an out-of-state subdivision or in any other manner aiding an owner, subdivider, or developer of an out-of-state subdivision who has not complied with the provisions of this act, to offer within this state subdivided lands.

History: En. Sec. 16, Ch. 191, L. 1963.

Repealing Clause

Section 17 of Ch. 191, Laws 1963 repealed all acts and parts of acts in conflict therewith.

effect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered."

Separability Clause

Section 18 of Ch. 191, Laws 1963 read "If any clause, sentence, paragraph, or part of this act shall for any reason be judged invalid by any court of competent jurisdiction, such judgment shall not

Effective Date

Section 19 of Ch. 191, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 7, 1963.

CHAPTER 22—DISPOSITION OF UNCLAIMED PROPERTY

Section 67-2201.	Definitions and use of terms.
67-2202.	Property held by banking or financial organizations.
67-2203.	Unclaimed funds held by life insurance corporations.
67-2204.	Deposits and refunds held by utilities.
67-2205.	Undistributed dividends and distributions of business associations.
67-2206.	Property of business associations and banking or financial organizations held in course of dissolution.
67-2207.	Property held by fiduciaries.
67-2208.	Property held by state courts and public officers and agencies.
67-2209.	Miscellaneous personal property held for another person.
67-2210.	Reciprocity for property presumed abandoned or escheated under the laws of another state.
67-2211.	Report of abandoned property.
67-2212.	Notice and publication of lists of abandoned property.
67-2213.	Payment or delivery of abandoned property.
67-2214.	Relief from liability by payment or delivery.
67-2215.	Income accruing after payment or delivery.
67-2216.	Periods of limitation not a bar.
67-2217.	Sale of abandoned property.
67-2218.	Deposit of funds.
67-2219.	Claim for abandoned property paid or delivered.
67-2220.	Determination of claims.
67-2221.	Judicial action upon determinations.
67-2222.	Election to take payment or delivery.
67-2223.	Examination of records.
67-2224.	Proceeding to compel delivery of abandoned property.
67-2225.	Penalties.
67-2226.	Rules and regulations.
67-2227.	Effect of laws of other states.
67-2228.	Severability.
67-2229.	Uniformity of interpretation.
67-2230.	Short title.

67-2201. Definitions and use of terms. As used in this act, unless the context otherwise requires:

(a) "Banking organization" means any bank, national bank, trust company, savings bank, industrial bank, land bank, safe deposit company, or a private banker engaged in business in this state.

(b) "Business association" means any corporation, other than a public corporation, joint stock company, business trust, partnership, or any association for business purposes of two or more individuals.

(c) "Financial organization" means any savings and loan association, building and loan association, credit union, co-operative bank, or investment company engaged in business in this state.

(d) "Holder" means any person in possession of property subject to this act belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this act.

(e) "Life insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

(f) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, or creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this act, or his legal representative.

(g) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two (2) or more persons having a joint or common interest, or any other legal or commercial entity.

(h) "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

History: En. Sec. 1, Ch. 244, L. 1963.

Title of Act

An act relating to the disposition of unclaimed property and making uniform the law with reference thereto; making provision for classifying such property as abandoned and setting up provisions of law for handling such property so as to protect the interests of the original own-

ers, relieve the holders of annoyance, expense and liability, preclude multiple liability, and preserve any windfalls that may result from abandonment to the state of Montana; providing that the funds becoming available to the state under the provisions of this act shall be deposited in the public school fund; and providing penalties for violations of this act.

67-2202. Property held by banking or financial organizations. The following property held or owing by a banking or financial organization is presumed abandoned:

(a) Any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has, within seven (7) years:

(1) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(2) Corresponded in writing with the banking organization concerning the deposit; or

(3) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization.

(b) Any funds paid in this state toward the purchase of shares or other interest in a financial organization, or any deposit made therewith in this state, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within seven (7) years:

(1) Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(2) Corresponded in writing with the financial organization concerning the funds or deposit; or

(3) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.

(c) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, and traveler's checks, that has been outstanding for more than seven (7) years from the date it was payable, or from the date of its issuance if payable on demand, unless the owner has within

seven (7) years corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization.

(d) Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than seven (7) years from the date on which the lease or rental period expired.

History: En. Sec. 2, Ch. 244, L. 1963.

67-2203. Unclaimed funds held by life insurance corporations. (a) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(b) "Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than seven (7) years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding seven (7) years, (1) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or (2) corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

History: En. Sec. 3, Ch. 244, L. 1963.

67-2204. Deposits and refunds held by utilities. The following funds held or owing by any utility are presumed abandoned:

(a) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven (7) years after the termination of the services for which the deposit or advance payment was made.

(b) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven (7) years after the date it became payable in accordance with the final determination or order providing for the refund.

History: En. Sec. 4, Ch. 244, L. 1963.

67-2205. Undistributed dividends and distributions of business associations. Any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a co-operative, who has not claimed it, or corresponded in writing with the business association concerning it, within seven (7) years after the date prescribed for payment or delivery, is presumed abandoned if:

(a) It is held or owing by a business association organized under the laws of or created in this state; or

(b) It is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state.

History: En. Sec. 5, Ch. 244, L. 1963.

67-2206. Property of business associations and banking or financial organizations held in course of dissolution. All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state, that is unclaimed by the owner within two (2) years after the date for final distribution, is presumed abandoned.

History: En. Sec. 6, Ch. 244, L. 1963.

67-2207. Property held by fiduciaries. All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within seven (7) years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by (a) memorandum on file with the fiduciary: *doesn't appear in list*

(a) If the property is held by a business association, banking organization, or financial organization organized under the laws of or created in this state; or

(b) If it is held by a business association, banking organization, or financial organization doing business in this state, but not organized under the laws of or created in this state, and the records of the business association, banking organization, or financial organization indicate

that the last known address of the person entitled thereto is in this state; or

(c) If it is held in this state by another person.

History: En. Sec. 7, Ch. 244, L. 1963.

67-2208. Property held by state courts and public officers and agencies.

All intangible personal property held for the owner by any court, public corporation, public authority, or public officer of this state, or a political subdivision thereof, that has remained unclaimed by the owner for more than seven (7) years is presumed abandoned.

History: En. Sec. 8, Ch. 244, L. 1963.

67-2209. Miscellaneous personal property held for another person.

All intangible personal property, not otherwise covered by this act, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than seven (7) years after it became payable or distributable is presumed abandoned.

History: En. Sec. 9, Ch. 244, L. 1963.

67-2210. Reciprocity for property presumed abandoned or escheated under the laws of another state. If specific property which is subject to the provisions of sections 2, 5, 6, 7 and 9 [67-2202, 67-2205, 67-2206, 67-2207 and 67-2209] is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to this act if:

(a) It may be claimed as abandoned or escheated under the laws of such other state; and

(b) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

History: En. Sec. 10, Ch. 244, L. 1963.

67-2211. Report of abandoned property. (a) Every person holding funds or other property, tangible or intangible, presumed abandoned under this act shall report to the state treasurer with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of three dollars (\$3) or more presumed abandoned under this act;

(2) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due,

except that items of value under three dollars (\$3) each may be reported in aggregate;

(4) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) Other information which the state treasurer prescribes by rule as necessary for the administration of this act.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of life insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. The state treasurer may postpone the reporting date upon written request by any person required to file a report.

(e) If the holder of property presumed abandoned under this act knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

(f) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

(g) The initial report filed under this act shall include all items of property that would have been presumed abandoned if this act had been in effect during the ten-year period preceding its effective date.

History: En. Sec. 11, Ch. 244, L. 1963.

67-2212. Notice and publication of lists of abandoned property. (a) Within one hundred twenty (120) days from the filing of the report required by section 11 [67-2211], the state treasurer shall cause notice to be published at least once each week for two successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

(b) The published notice shall be entitled "Notice of Names of Persons Appearing to Be Owners of Abandoned Property," and shall contain:

(1) The names in alphabetical order and last known addresses, if any, or person listed in the report and entitled to notice within the county as hereinbefore specified.

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the state treasurer.

(3) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five (65) days from the date of the second published notice, the abandoned property will be placed not later than eighty-five (85) days after such publication date in the custody of the state treasurer to whom all further claims must thereafter be directed.

(c) The state treasurer is not required to publish in such notice any item of less than twenty-five dollars (\$25) unless he deems such publication to be in the public interest.

(d) Within one hundred twenty (120) days from the receipt of the report required by section 11 [67-2211], the state treasurer shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars (\$25) or more presumed abandoned under this act.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the state treasurer, property is being held to which the addressee appears entitled.

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice the property will be placed in the custody of the state treasurer to whom all further claims must be directed.

History: En. Sec. 12, Ch. 244, L. 1963.

67-2213. Payment or delivery of abandoned property. Every person who has filed a report as provided by section 11 [67-2211] shall within twenty (20) days after the time specified in section 12 [67-2212] for claiming the property from the holder pay or deliver to the state treasurer all abandoned property specified in the report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in section 12 [67-2212], or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the state treasurer, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

History: En. Sec. 13, Ch. 244, L. 1963.

67-2214. Relief from liability by payment or delivery. Upon the payment or delivery of abandoned property to the state treasurer, the state shall assume custody and shall be responsible for the safekeeping

thereof. Any person who pays or delivers abandoned property to the state treasurer under this act is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid moneys to the state treasurer pursuant to this act may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the state treasurer shall forthwith reimburse the holder for the payment. Any holder who has paid moneys to the state treasurer pursuant to this act, and after exhausting his legal remedies, is compelled by authority of another jurisdiction to make a second payment to any other state, upon certified proof thereof and upon proof that the state treasurer was notified in writing of the claim of such other state within thirty (30) days after such claim has been asserted, the state treasurer shall refund to such holder the amount of such second payment not in excess of the amount paid to the state treasurer under this act.

History: En. Sec. 14, Ch. 244, L. 1963.

67-2215. Income accruing after payment or delivery. When property is paid or delivered to the state treasurer under this act, the owner is not entitled to receive income or other increments accruing thereafter.

History: En. Sec. 15, Ch. 244, L. 1963.

67-2216. Periods of limitation not a bar. The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this act or to pay or deliver abandoned property to the state treasurer.

History: En. Sec. 16, Ch. 244, L. 1963.

67-2217. Sale of abandoned property. (a) All abandoned property other than money delivered to the state treasurer under this act shall within one (1) year after the delivery be sold by him to the highest bidder at public sale in whatever city in the state affords in his judgment the most favorable market for the property involved. The state treasurer may decline highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property.

(b) Any sale held under this section shall be preceded by a single publication of notice thereof, at least three (3) weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

(c) The purchaser at any sale conducted by the state treasurer pursuant to this act shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claim-

ing through or under them. The state treasurer shall execute all documents necessary to complete the transfer of title.

History: En. Sec. 17, Ch. 244, L. 1963.

67-2218. Deposit of funds. (a) All funds received under this act, including the proceeds from the sale of abandoned property under section 17 [67-2217], shall forthwith be deposited by the state treasurer in the public school fund of the state, except that the state treasurer shall retain in the agency fund an amount not exceeding twenty-five thousand dollars (\$25,000) from which he shall make prompt payment of claims allowed by him as hereinafter provided. Before making the deposit he shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

(b) Before making any deposit to the credit of the public school fund, the state treasurer may deduct: (1) any costs in connection with sale of abandoned property, (2) any costs of mailing and publication in connection with any abandoned property, and (3) reasonable service charges.

History: En. Sec. 18, Ch. 244, L. 1963.

67-2219. Claim for abandoned property paid or delivered. Any person claiming an interest in any property delivered to the state under this act may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the state treasurer.

History: En. Sec. 19, Ch. 244, L. 1963.

67-2220. Determination of claims. (a) The state treasurer shall consider any claim filed under this act and may hold a hearing and receive evidence concerning it. If a hearing is held he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

(b) If the claim is allowed, the state treasurer shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

History: En. Sec. 20, Ch. 244, L. 1963.

67-2221. Judicial action upon determinations. Any person aggrieved by a decision of the state treasurer or as to whose claim the state treasurer has failed to act within ninety (90) days after the filing of the claim, may commence an action in the district court of Lewis and Clark county to establish his claim. The proceeding shall be brought within ninety (90) days after the decision of the state treasurer or within one hundred eighty (180) days from the filing of the claim if the state treasurer fails to act. The action shall be tried de novo without a jury.

History: En. Sec. 21, Ch. 244, L. 1963.

67-2222. Election to take payment or delivery. The state treasurer, after receiving reports of property deemed abandoned pursuant to this act, may decline to receive any property reported which he deems to have a value less than the cost of giving notice and holding sale, or he may, if he deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates.

History: En. Sec. 22, Ch. 244, L. 1963.

67-2223. Examination of records. The state treasurer may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that such person has failed to report property that should have been reported pursuant to this act.

History: En. Sec. 23, Ch. 244, L. 1963.

67-2224. Proceeding to compel delivery of abandoned property. If any person refuses to deliver property to the state treasurer as required under this act, he shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

History: En. Sec. 24, Ch. 244, L. 1963.

67-2225. Penalties. (a) Any person who willfully fails to render any report or perform other duties required under this act shall be punished by a fine of fifty dollars (\$50) for each day such report is withheld, but not more than one thousand dollars (\$1,000).

(b) Any person who willfully refuses to pay or deliver abandoned property to the state treasurer as required under this act shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or imprisonment for not more than six (6) months, or both, in the discretion of the court.

History: En. Sec. 25, Ch. 244, L. 1963.

67-2226. Rules and regulations. The state treasurer is hereby authorized to make necessary rules and regulations to carry out the provisions of this act and shall be represented in the enforcement of the provisions of this act by the special assistant attorney general in charge of escheated estates.

History: En. Sec. 26, Ch. 244, L. 1963.

67-2227. Effect of laws of other states. This act shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to the effective date of this act.

History: En. Sec. 27, Ch. 244, L. 1963.

67-2228. Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

History: En. Sec. 28, Ch. 244, L. 1963.

67-2229. Uniformity of interpretation. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 29, Ch. 244, L. 1963.

67-2230. Short title. This act may be cited as the "Uniform Disposition of Unclaimed Property Act."

History: En. Sec. 30, Ch. 244, L. 1963.

TITLE 68—PUBLIC EMPLOYEES' RETIREMENT ACT

- Chapter 4. Cost of service, how borne—change of status—membership—retirement fund, 68-405.
9. Service and disability retirement allowances, 68-901.
 11. Death benefits, 68-1101.
 14. Game wardens' retirement system, 68-1401 to 68-1429.

CHAPTER 4—COST OF SERVICE, HOW BORNE—CHANGE OF STATUS—MEMBERSHIP—RETIREMENT FUND

Section 68-405. Fund abolished.

68-405. Fund abolished. The "public employees' retirement fund" is hereby abolished. All contributions paid into the retirement system as the employer agency portion from the state, counties, cities, towns, school districts or other public agencies or political subdivisions shall constitute a pooled or mingled account in the agency fund for payment of all claims made and approved. Whenever the words "retirement fund" appear in this act they shall be taken to mean the public employees' retirement account in the agency fund.

History: En. Sec. 13, Ch. 212, L. 1945; amd. Sec. 4, Ch. 297, L. 1947; amd. Sec. 197, Ch. 147, L. 1963.

Amendment

The 1963 amendment completely re-wrote this section. For previous text, see parent volume.

CHAPTER 9—SERVICE AND DISABILITY RETIREMENT ALLOWANCES

Section 68-901. Service retirement allowance.

68-901. Service retirement allowance. A member upon retirement from service is entitled to receive a service retirement allowance which shall consist of:

(a). * * * [Same as parent volume.] ✓

(b) A pension, purchased by the contributions of the state, or the contracting city, equal to (1) that portion of the annuity purchased by the accumulated normal contributions of the member, or (2) one quarter ($\frac{1}{4}$) of his average final compensation provided his total state service is at least thirty-five (35) years, otherwise, a pension which shall be one one-hundred fortieth ($\frac{1}{140}$) of his average final compensation multiplied by the number of years of state service; whichever is greater.

(c) to (f). * * * [Same as parent volume.] ✓ *see over* *which is*

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(g). * * * [Same as parent volume.] ✓

DISABILITY RETIREMENT

(h) Any member who has not reached seventy (70) years of age shall be retired for disability if incapacitated for the performance of duty as the result of any injury or disease arising out of and in the course of

his employment. Incapacity for performance of duty shall be determined by the board of administration of the public employees' retirement system, and said board of administration shall determine whether such incapacity is the result of injury or disease arising out of and in the course of employment. In the discharge of its duty regarding such determination, the board or any member thereof or duly authorized examiner or other duly authorized representative of the board shall have power to conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a claim for disability retirement. If the board determines on the evidence that it obtains and application filed that the disability resulted from injury or disease arising out of and in the course of employment, the said member shall be retired forthwith and be paid the benefits provided under the retirement system. Any such member incapacitated for the performance of duty by reason of a cause not included in the immediately preceding sentence, and any other member so incapacitated, regardless of the cause, shall be retired forthwith regardless of age but only after ten (10) years of service to the state, or to the contracting city.

(i). * * * [Same as parent volume.] ✓

DISABILITY RETIREMENT ALLOWANCE

(j) Upon retirement for disability a member who has attained the age of sixty (60) years shall receive a service retirement allowance as provided by subsections (a), (b), (c) of this section. Upon retirement of a member for disability resulting from injury or disease arising out of and in the course of employment, such member shall receive a retirement allowance of fifty per centum (50%) of his final compensation; provided, however, that for any period of time for which the industrial accident board has awarded compensation to the member, whether or not such compensation is received in weekly payments or in a lump sum, the retirement allowance shall be twenty-five per centum (25%) of his final compensation and at the end of such period of time shall revert to fifty per centum (50%) as provided above.

(k) and (l). * * * [Same as parent volume.] ✓ *see 5-6*

History: En. Sec. 20, Ch. 212, L. 1945; amd. Sec. 6, Ch. 186, L. 1951; amd. Sec. 5, Ch. 246, L. 1959; amd. Sec. 1, Ch. 207, L. 1963.

Amendment

The 1963 amendment inserted the design-

nation for clause (1) of subd. (b); added clause (2) and the words "whichever is greater" to subd. (b); deleted second and third paragraphs of subd. (h), for text of which see parent volume; and added the proviso to the second sentence of subd. (j).

CHAPTER 11—DEATH BENEFITS

Section 68-1101. Death benefit.

68-1101. Death benefit. Upon the death before retirement of a member while in the state service, or within four (4) months after the discon-

tinuance of state service, or while physically or mentally incapacitated for the performance of his duty, if such incapacity has been continuous from the discontinuance of state service, the retirement system shall be liable for a death benefit, which death benefit shall be paid to such person having an insurable interest in his life as he has nominated by written designation duly executed and filed with the retirement board or, if no beneficiary shall be nominated, then pursuant to the provisions of section 68-1201; provided, however, that death benefits shall not be payable to the beneficiary of a member who (a) has elected a joint life annuity option as provided in section 68-1005, or (b) who has received a disability retirement allowance as provided for in paragraphs (i) through (l) of section 68-901, for a period of four (4) months immediately preceding death. Such death benefit shall consist of:

(a) to (f). * * * [Same as parent volume.] *See 12V*

History: En. Sec. 26, Ch. 212, L. 1945; amd. Sec. 7, Ch. 186, L. 1951; amd. Sec. 2, Ch. 225, L. 1953; amd. Sec. 9, Ch. 92, L. 1955; amd. Sec. 2, Ch. 207, L. 1963.

Amendment

The 1963 amendment substituted "which death benefit shall be paid" before "such person having an insurable interest" in the first paragraph for "which if there is a surviving wife or surviving children under eighteen (18) years of age, shall be paid in monthly installments and to the surviving wife and children as presented therein; otherwise such death benefit shall be paid to his estate, or"; and inserted in the first paragraph the words "or, if no beneficiary shall be nominated, then pursuant to the provisions of section 68-1201."

Separability Clause

Section 3 of Ch. 207, Laws 1963 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 4 of Ch. 207, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 5 of Ch. 207, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 7, 1963.

CHAPTER 14—GAME WARDENS' RETIREMENT SYSTEM

- Section 68-1401. Definition of terms.
 68-1402. State game warden defined.
 68-1403. Establishment of Montana state game wardens' retirement system.
 68-1404. Montana state game wardens' retirement board.
 68-1405. Payments into the Montana game wardens' retirement system.
 68-1406. Rules and regulations—actuarial data.
 68-1407. Membership.
 68-1408. State game wardens' retirement account.
 68-1409. Payments by contributors.
 68-1410. Contributions by the state of Montana.
 68-1411. Retirement.
 68-1412. Voluntary retirement.
 68-1413. Retirement allowance.
 68-1414. Disability retirement allowance.
 68-1415. Involuntary retirement allowance.
 68-1416. Refunds in case of resignation or discharge.
 68-1417. Payments upon death attributable to employment.
 68-1418. Payments in case of death from natural causes.
 68-1419. Monthly payments of retirement allowances.
 68-1420. Exemption from taxes and execution.
 68-1421. Nomination of beneficiary.
 68-1422. Service in the armed forces of the United States.

- 68-1423. Fraud—correction of errors.
- 68-1424. Restrictions on payments.
- 68-1425. Subrogation.
- 68-1426. Payments under other laws.
- 68-1427. Optional retirement allowance.
- 68-1428. Transfer of dormant accounts.
- 68-1429. State public employees' retirement system, ineligibility of member.

68-1401. Definition of terms. The following words and phrases as used in this act, unless a different meaning is plainly implied by the context, shall have the following meanings:

"Accumulated deductions," the total of the amount deducted from the salary of a contributor and paid into the account, and standing to his credit in the account together with the regular interest thereon.

"Beneficiary," shall be such person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

"Retired state game warden," any person in receipt of a retirement allowance under this act.

"Board," the Montana state game wardens' retirement board.

"Contributor," any person who has accumulated deductions in the account, standing to his credit.

"Final salary," the average annual compensation received by a contributor before any deductions have been made, and exclusive of maintenance, allowances and expenses, for any three (3) years of continuous service upon which contributions have been made, or in the event a member has not served three (3) years, the total retirement compensation earned, divided by the number of years served.

"Actuarial equivalent," the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on such person's attained age and sex at the time the option becomes available.

"Account," the Montana state game wardens' retirement account in the agency fund.

"Involuntary retirement," a retirement not for cause and before retirement age.

"Member's annuity," payments for life derived from contributions made by the contributor.

"Optional retirement age," the age at which a contributor may retire after twenty (20) years service or more; provided that such contributor has reached the age of fifty-five (55) years.

"Retirement age," the age at which a member retires after twenty-five (25) years of creditable service as a state game warden of the Montana fish and game department; provided that all members must retire at age sixty (60).

"Retirement allowance," the state annuity plus the member's annuity.

"State annuity," payments for life derived from contributions made by the state of Montana fish and game moneys in the earmarked revenue fund.

History: En. Sec. 1, Ch. 130, L. 1963.

Title of Act

An act creating and establishing a Montana state game wardens' retirement system; defining the terms "accumulated deductions," "beneficiary," "retired state game warden," "board," "contributor," "final salary," "actuarial equivalent," "account," "involuntary retirement," "member's annuity," "optional retirement age," "retirement age," "retirement allowance," "state annuity," "state game warden"; creating a Montana state game wardens' retirement board; providing for payments into the Montana game wardens' retirement account; providing the board may establish rules and regulations for proper administration, operation and enforcement of this act; defining who shall be members of said retirement system; creating a state game wardens' retirement account; providing for contributions by members of the Montana state game wardens; providing for contributions by the state of Montana; providing for retirement, voluntary retirement, retirement allowance, disability retirement allowance, involuntary

retirement allowance, refunds in case of resignation or discharge, payments upon death, payments in case of death from natural causes; providing for monthly payments of retirement allowances; providing for the exemption from taxes and execution of member's annuity; providing for the manner of designating beneficiaries; providing for service in the armed forces of the United States; prohibiting fraud and providing for the manner of correcting errors; providing for restrictions on payments to beneficiaries; providing for the subrogation of the state of Montana to the rights of the members or dependents against certain third parties; providing for payments under other laws; providing for optional retirement allowances; providing that each game warden shall be ineligible to membership in state public employees' retirement system; providing that as to constitutionality the provisions of this act are severable; providing this act shall be in full force and effect from and after its passage and approval; and repealing all acts and parts of acts in conflict herewith.

68-1402. State game warden defined. Whenever used in this act, state game warden means all state fish and game wardens hired by the state fish and game commission and shall include all warden supervisory personnel whose salaries or compensation is paid out of the Montana fish and game moneys in the earmarked revenue fund.

History: En. Sec. 2, Ch. 130, L. 1963.

68-1403. Establishment of Montana state game wardens' retirement system. A retirement system is hereby established for Montana state game wardens.

History: En. Sec. 3, Ch. 130, L. 1963.

68-1404. Montana state game wardens' retirement board. There is hereby created a Montana state game wardens' retirement board, hereinafter referred to as the "board." The board shall consist of five (5) members who shall be the same persons as those who compose the board of administration of the public employees' retirement system.

History: En. Sec. 4, Ch. 130, L. 1963.

68-1405. Payments into the Montana game wardens' retirement system. All contributions by the state fish and game moneys in the earmarked revenue fund and all contributions by the state game wardens as designated by section 1 [68-1401] above, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the board, who shall credit such payments to the Montana state game wardens' retirement account in the agency fund. Such board shall have exclusive control of the administration of such account. The state treasurer shall be custodian of the account, subject to the exclusive control of the board as to the administra-

tion thereof and the state board of land commissioners as to the investment thereof. Whenever there is on deposit in the Montana state game wardens' retirement account a sum in excess of twenty-five thousand dollars (\$25,000), such excess will be invested by the state board of land commissioners as part of the long-term investment fund and any of the account less than twenty-five thousand dollars (\$25,000) in amount shall be invested by the state board of land commissioners as part of the short-term investment fund when so directed by the Montana game wardens' retirement board.

History: En. Sec. 5, Ch. 130, L. 1963.

68-1406. Rules and regulations—actuarial data. The board may establish such rules and regulations as it deems necessary and is charged within the limitations of this act for its proper administration, operation and enforcement, and shall be the authority under this act as to the conditions under which persons may be admitted to and continue to receive benefits under the retirement system. It shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors and to the beneficiaries of the account, and shall adopt for the retirement system one or more mortality tables.

History: En. Sec. 6, Ch. 130, L. 1963.

68-1407. Membership. Every state game warden, including all warden supervisory personnel, whose salary or compensation for services is paid wholly out of the Montana fish and game moneys in the earmarked revenue fund and who is assigned to law enforcement in the Montana fish and game department, shall be required to become a member of the retirement system established by this act, on July 1, 1963, and thereafter when first becoming a state game warden. Contributions by members under this act shall commence with the first payroll after July 1, 1963. If any person becomes a state game warden subsequent to July 1, 1963, or shall have been at any time heretofore a state game warden, he shall receive credit for any such service prior to July 1, 1963, upon complying with the provisions of this act. All state game wardens shall be members of the retirement system so long as actively employed in such capacity.

History: En. Sec. 7, Ch. 130, L. 1963.

68-1408. State game wardens' retirement account. There is hereby created state game wardens' retirement account in the agency fund and all moneys received under the provisions of this act shall be credited to said account. In addition thereto, all moneys any state game warden, employed as such on July 1, 1963, has heretofore paid into the public employees' retirement system, whether as a state game warden or otherwise, is hereby appropriated therefrom and credited to the account hereby created and any such state game warden shall be allowed service credit hereunder for any such previous service, including other Montana state, county or city service. The state treasurer shall, upon the passage of this act, ascertain the amount heretofore paid by state game wardens or as deputy game

wardens as aforesaid and transfer the amount so paid to the account hereby created. The state examiner shall audit this transfer of funds.

History: En. Sec. 8, Ch. 130, L. 1963.

68-1409. Payments by contributors. Every member shall be required to contribute into the account a sum equal to seven per cent (7%) of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account; provided that [for] any member who contributes after twenty-five (25) years of service, the contributor's retirement allowance shall be increased in an amount as calculated on an actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his retirement.

History: En. Sec. 9, Ch. 130, L. 1963.

Compiler's Note

The compiler has inserted the bracketed word "for" in the proviso.

68-1410. Contributions by the state of Montana. (a) There shall be paid out of the Montana fish and game moneys in the earmarked revenue fund, monthly, by the state treasurer, a sum equal to seven per cent (7%) of the total amount of each Montana game wardens' retirement system member's salary, the same to be credited to the retirement account created by this act. (b) The expense of the administration of this act, exclusive of the payment of retirement allowances and other benefits shall be paid by the state of Montana out of the fish and game moneys in the earmarked revenue fund, made on the basis of budgets submitted by the board.

History: En. Sec. 10, Ch. 130, L. 1963.

68-1411. Retirement. Any member in service who has completed at least twenty-five (25) years of creditable service, and who has reached the age of fifty-five (55) years, may retire on service retirement allowance upon written application to the board, setting forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the filing thereof, he desires to be retired; provided that retirement shall be compulsory at age sixty (60).

History: En. Sec. 11, Ch. 130, L. 1963.

68-1412. Voluntary retirement. If a contributor has served twenty (20) years of creditable service as a state game warden, and has reached the age of fifty-five (55) years, he is hereby granted the option and privilege of retiring and, in such case, his retirement allowance shall be proportionately reduced.

History: En. Sec. 12, Ch. 130, L. 1963.

68-1413. Retirement allowance. Upon retirement from service a service retirement allowance which shall consist of the state annuity plus the member's annuity. The member's annuity shall be the actuarial equivalent of his aggregate contributions at the time of his retirement and the state annuity shall be in an amount which, when added to the member's annuity, will provide a total retirement allowance of one-half ($\frac{1}{2}$) of his average final salary.

History: En. Sec. 13, Ch. 130, L. 1963.

68-1414. Disability retirement allowance. In case of the total disability of a contributor, permanent in character, regardless of length of service

of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement; provided that if such total disability is a direct result of any service to the Montana fish and game department in line of duty, and the contributor has had over ten (10) years of service, then such state game warden who is totally and permanently disabled shall be retired on total retirement allowance of one-half ($\frac{1}{2}$) of his average final salary.

History: En. Sec. 14, Ch. 130, L. 1963.

68-1415. Involuntary retirement allowance. Should a contributor be discontinued from service, not voluntarily, after having completed ten (10) years of total service, but before reaching retirement age, he shall, upon filing of an application in the manner herein provided for retirement, be paid as he may elect as follows: (a) the full amount of accumulated deductions standing to his credit; or (b) a member's annuity of equivalent actuarial value to his accumulated deductions standing to his credit, plus the actuarial equivalent of a state annuity having a value equal to the present value of a state annuity then standing to his credit.

History: En. Sec. 15, Ch. 130, L. 1963.

68-1416. Refunds in case of resignation or discharge. When a contributor resigns of his own volition or is discharged for cause before becoming entitled to a retirement allowance, then the deductions standing to his credit shall be paid to him.

History: En. Sec. 16, Ch. 130, L. 1963.

68-1417. Payments upon death attributable to employment. If the board shall find that a contributor died as a direct and proximate result of injury received in the course of his employment, a retirement allowance shall be paid to his beneficiary. Such retirement allowance shall consist of: (a) a member's annuity which shall be the actuarial equivalent of the contributor's accumulated deductions standing to his credit; and (b) the actuarial equivalent of a state annuity which when added to the member's annuity will provide a total annuity equal to fifty per cent (50%) of the final salary of the contributor, less the amount which is paid to any such beneficiary under the Workmen's Compensation Act of the state of Montana, during the period such compensation is paid or payable; provided that in no event shall a beneficiary be paid for more than fifteen (15) years or past the age of sixty-five (65) years, whichever is the greater.

History: En. Sec. 17, Ch. 130, L. 1963.

68-1418. Payments in case of death from natural causes. (a) If a retired state game warden dies before receiving in payments the present value of his member's annuity and the state annuity as it was at the time of his retirement, the balance shall be paid to his beneficiary.

(b) If a member dies before reaching retirement age, his beneficiary shall be entitled to the actuarial equivalent of the options as provided in section 15 [68-1415] above.

History: En. Sec. 18, Ch. 130, L. 1963.

68-1419. Monthly payments of retirement allowances. The retirement allowances granted under the provisions of this act shall be paid in equal monthly installments and shall not be increased, decreased, revoked or repealed unless by act of the legislative assembly of the state of Montana.

History: En. Sec. 19, Ch. 130, L. 1963.

68-1420. Exemption from taxes and execution. Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these, shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment or any other process whatsoever and shall be unassignable.

History: En. Sec. 20, Ch. 130, L. 1963.

68-1421. Nomination of beneficiary. Every contributor shall have the authority to name his beneficiary by written designation duly acknowledged and filed with the board, and to change the beneficiary in like manner. Such designation and all changes must be filed with the board up until, but not after, the time of retirement.

History: En. Sec. 21, Ch. 130, L. 1963.

68-1422. Service in the armed forces of the United States. Any state game warden now in or hereafter inducted into the armed forces of the United States, shall have the option: (a) to continue his payments into the account; or (b) allow the board to make his payments for him during such military service, in which event he shall repay the account the full amount of such payments upon his return to state game warden status, and such repayments must be made within two (2) years after his return to active state game warden status; provided that a member's service in the armed forces of the United States shall be credited to and made a part of the member's service allowance.

History: En. Sec. 22, Ch. 130, L. 1963.

68-1423. Fraud—correction of errors. (a) No person shall knowingly make any false statement or falsify or permit to be falsified any record or records of the retirement system herein established in any attempt to defraud such system; (b) should any such change in records fraudulently made or any mistake in records inadvertently made result in any contributor or beneficiary receiving more or less than he would have been entitled to had the records been correct, then, on the discovery of such error, the board shall correct such error and shall adjust the payments which shall be made to the contributor or annuitant in such manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

Any person violating any of the provisions of subsection (a) of this section shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1,000) or suffer imprisonment not exceeding one year, or both, in the discretion of the court.

History: En. Sec. 23, Ch. 130, L. 1963.

68-1424. Restrictions on payments. If any beneficiary is convicted of a felony, the board shall have the authority to revoke or suspend, for

as long a time as it sees fit, disbursement of the state annuity. Where the illness or injuries causing a contributor to be retired, or where the death of the contributor is directly and proximately caused by such contributor's immoral or intemperate conduct or gross negligence, the board shall have the authority to refuse, revoke or suspend for as long a time as it sees fit, disbursement of the state annuity.

History: En. Sec. 24, Ch. 130, L. 1963.

68-1425. Subrogation. Where a third person is liable to the member or [any] of his dependents for injury or death, the state shall be subrogated to the right of the dependents against such third person; but only to the extent of the state annuity payable under this act by the state. Any recovery against such third person, in excess of the state annuity theretofore paid or thereafter to be paid by the state shall be paid forthwith to the contributor or the person designated by such contributor.

History: En. Sec. 25, Ch. 130, L. 1963.

Compiler's Note

The compiler inserted the bracketed word "any" in the first sentence.

68-1426. Payments under other laws. All payments provided for in this act are in addition to any other benefits now or hereafter provided for under the Workmen's Compensation Act of the state of Montana.

History: En. Sec. 26, Ch. 130, L. 1963.

68-1427. Optional retirement allowance. Until the first payment on account of any retirement allowance is made and subject to the conditions that, if he die after retirement and within thirty (30) days from the date upon which his election or changed election is received at the office of the retirement board, then said election is void and of no effect, and the death shall be considered as that of a member before retirement. A member or beneficiary may elect, or revoke or change a previous election prior to the approval of the previous election to receive the actuarial equivalent of his retirement allowance as of the date of retirement, in a lesser retirement allowance, payable throughout life with one of the following options:

Option No. 1. Upon his death, his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option No. 2. Upon his death, one-half ($\frac{1}{2}$) of his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option No. 3. Such other benefit or benefits shall be paid either to the beneficiary or to such other person or persons as he nominates, as, together with such lesser retirement allowance, are the actuarial equivalent of his retirement allowance, and shall be approved by the board.

History: En. Sec. 27, Ch. 130, L. 1963.

68-1428. Transfer of dormant accounts. The board may in its discretion transfer the accumulated deductions of a member to the employer's

account in the Montana state game wardens' retirement account in the agency fund if the member's account has been dormant for a period of ten (10) years provided that no right of the member shall be jeopardized by such transfer and the accumulated deductions shall be transferred to the member's name upon subsequent re-entry to membership.

History: En. Sec. 28, Ch. 130, L. 1963.

68-1429. State public employees' retirement system, ineligibility of member. Each state game warden shall, after July 1, 1963, become a member of this retirement system and thereafter no state game warden shall be eligible to membership to the state public employees' retirement system and the provisions of said law shall not apply to Montana state game wardens.

History: En. Sec. 29, Ch. 130, L. 1963.

Separability Clause

Section 30 of Ch. 130, Laws 1963 read "The provisions of this act are severable, and, if any section, subdivision, sentence, or word of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, it shall not affect the remaining portions of this act."

Repealing Clause

Section 31 of Ch. 130, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 32 of Ch. 130, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 2, 1963.

TITLE 69—PUBLIC HEALTH AND SAFETY

- Chapter 1. State board of health—creation—powers and duties, 69-119.
5. Vital statistics, 69-536.1, 69-536.2.
 13. Public and other water supplies—control by state board of health, 69-1342, 69-1343, 69-1345.
 15. Boiler inspection—engineers license, 69-1516.
 23. Cadavers—procurement for teaching anatomical science—autopsies and dissections, 69-2306, 69-2309, 69-2310.
 30. Montana Hospital Survey and Construction Act, 69-3015.
 32. State board of health—maternal and child health services—educative program—school nurses—supervision by board—authority of counties and school boards—services for crippled children—education for children and adults in use and abuse of narcotics, 69-3206 to 69-3208.
 34. Sanitarians, 69-3404.
 35. Motorboat and vessel regulation, 69-3502, 69-3505.

CHAPTER 1—STATE BOARD OF HEALTH—CREATION— POWERS AND DUTIES

Section 69-119. Rules and regulations for transportation of dead bodies.

69-119. (2456) Rules and regulations for transportation of dead bodies. The state board of health shall make all needful rules and regulations for the transportation of dead bodies, and such rules and regulations shall, so far as shall be deemed practicable, be in conformity with similar rules and regulations now in force in other North American states and countries.

History: En. Sec. 26, Ch. 110, L. 1907; Sec. 1499, Rev. C. 1907; re-en. Sec. 2456 R. C. M. 1921; amd. Sec. 18, Ch. 41, L. 1963.

Amendment

The 1963 amendment deleted from the end of the section a clause reading: "and to this end they may establish a system of licensing embalmers and undertakers."

CHAPTER 5—VITAL STATISTICS

Section 69-536.1. Clerks of court to report divorces and annulments—information as to parties.

69-536.2. Judicial information on divorces and annulments.

69-536.1. Clerks of court to report divorces and annulments—information as to parties. Contemporaneously with the filing of a decree of divorce or annulment of marriage, there shall be submitted by the clerk of court of the district court with whom such action is filed a report of such action on a form prescribed by the state registrar of vital statistics. Said report shall contain information as follows: name, age, birthplace, residence, race or color, occupation and number of previous marriages of each party; the date and place of the marriage of the parties; the number of children under eighteen (18) years of age in the custody of either or both parties and residing with them; and the grounds of such action. Such information shall be supplied to the clerks by the parties to the action or their respective attorneys.

History: En. Sec. 1, Ch. 137, L. 1963.

Title of Act

An act requiring submission of vital statistics information by clerks of the

district courts at time of entry of decree of divorce or annulment and providing for transmittal of such information to the state registrar of vital statistics.

69-536.2. **Judicial information on divorces and annulments.** The clerk of the district court shall indicate upon said form the cause number of the action, the county and the judicial district wherein filed the date of the judgment and to which party granted. The completed form shall be transmitted to the state registrar as provided by section 69-536, R.C.M., 1947.

History: En. Sec. 2, Ch. 137, L. 1963.

CHAPTER 13—PUBLIC AND OTHER WATER SUPPLIES— CONTROL BY STATE BOARD OF HEALTH

Section 69-1342. Declaration of state public policy on subdivisions.

69-1343. "Subdivision" defined.

69-1345. Filing of map or plat subject to sanitary restriction—submission to and approval by board of health—removal or modification of restriction.

69-1342. Declaration of state public policy on subdivisions. The legislative assembly has determined that the health and safety of Montana citizens are being endangered by drainage from cesspools, septic tanks, privies, water closets, and other sources of polluting matter by liquid raising to the ground surface creating nuisances and seeping into drinking water supplies obtained from wells, springs, streams, lakes and ponds. It is declared the public policy of this state to extend the present laws controlling water supply and sewage disposal to include individual wells that may be affected by adjoining sewage disposal and individual sewage systems that may affect adjoining wells.

History: En. Sec. 1, Ch. 95, L. 1961; **Amendment**
amd. Sec. 1, Ch. 164, L. 1963.

The 1963 amendment substituted "affected" and "affect" near the end of the section for "effected" and "effect."

69-1343. "Subdivision" defined. The word "subdivision" as used in this act shall mean any tract of land which is hereafter divided into two (2) or more parcels, any parcel of which is less than five (5) acres in size, along an existing or proposed street, highway, easement or right of way for sale, rent or lease, as residential lots or residential or industrial or commercial building plots which are described by reference to a map or survey of the property or by any other method of description.

History: En. Sec. 2, Ch. 95, L. 1961; **Amendment**
amd. Sec. 2, Ch. 164, L. 1963.

The 1963 amendment substituted "two (2) or more parcels" for "five (5) or more parcels"; and inserted "or industrial or commercial" before "building plots."

69-1345. Filing of map or plat subject to sanitary restriction—submission to and approval by board of health—removal or modification of restriction. (a). * * * [Same as parent volume.] ✓

(b) Any such subdivision map or plat or revision thereof may be submitted to the state board of health at any time prior to or after its filing with the county clerk and recorder for review and approval by the state board of health for the water and sewage facilities proposed for such subdivision in accordance with the provision of this act and its rules and

regulations. Upon approval of the state board of health said board shall provide the county clerk and recorder a record of its approval or any conditions thereof for recording on said map or plat or for attachment thereto. When any subdivision map or plat calls for both a public water and public sewage system and the design and construction of such is not complete a conditional approval shall be given and recorded by the state board of health; provided, however, that permanent buildings as described above shall not be occupied in such subdivision until such restriction has been removed or modified as provided hereafter.

(c) Any such subdivision map or plat or revision thereof filed by the county clerk and recorder subject to a sanitary restriction shall have such restriction removed or modified with such restriction removal or modification being made and recorded by the county clerk and recorder on or attached to said map or plat upon receipt of state board of health notice that (a) the state board of health approves plans and specifications for a public water facility and a public sewage facility under existing law pertaining to such facilities and such facilities are under construction or (b) the subdivision map or plat is approved as provided for under the rules and regulations for subdivisions not providing public water or public sewage systems.

History: En. Sec. 4, Ch. 95, L. 1961; amd. Sec. 3, Ch. 164, L. 1963.

Amendment

The 1963 amendment substituted "conditional approval" for "restricted approval" in the first part of the last sen-

tence of subsection (b); substituted "shall not be occupied" for "shall not be constructed" in the proviso appearing at the end of subsection (b); and substituted "under construction" for "constructed" at the end of clause (a) in subsection (c).

CHAPTER 15—BOILER INSPECTION—ENGINEERS LICENSE

Section 69-1516. Certificates must be renewed yearly—disposition of moneys.

69-1516. (2727) Certificates must be renewed yearly—disposition of moneys. All certificates of license to engineers of all classes shall be renewed yearly, except as herein provided. The fee for renewal is two dollars (\$2.00) in all cases. Any engineer failing to renew his license as herein provided, or within at least thirty days thereafter, must forward the fee for the original license of the same grade, before license can be reissued; provided, however, that any engineer whose license expired while such engineer was in the military or naval service of the United States shall have sixty days (60) from the time such engineer is discharged from such military or naval service within which to renew his license at the renewal fee of one dollar.

All moneys collected by virtue of the provisions of this act must be paid into the state treasury once in each month and credited to the earmarked revenue fund.

History: En. Sec. 6, Ch. 32, L. 1905; re-en. Sec. 1656, Rev. C. 1907; amd. Sec. 14, Ch. 30, L. 1913; amd. Sec. 1, Ch. 54, L. 1919; re-en. Sec. 2727, R. C. M. 1921; amd. Sec. 2, Ch. 54, L. 1959; amd. Sec. 167, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund" for "the industrial administration fund" at the end of the section.

CHAPTER 23—CADAVERS—PROCUREMENT FOR TEACHING
ANATOMICAL SCIENCE—AUTOPSIES AND DISSECTIONS

- Section 69-2306. Burial permit to accompany body—burial.
69-2309. Qualifications to perform autopsies or post-mortem examinations—written report.
69-2310. Autopsy performed contrary to law a misdemeanor—persons exempt from law.

69-2306. Burial permit to accompany body—burial. The burial permit shall accompany the body to said educational institution and by it be properly registered for burial and buried by a licensed mortician or funeral director, at the expense of the institution of higher learning making application for the use of said dead human bodies.

History: En. Sec. 6, Ch. 102, L. 1943; **Amendment**
amd. Sec. 19, Ch. 41, L. 1963.

The 1963 amendment substituted "mortician or funeral director" for "embalmer or undertaker."

69-2309. Qualifications to perform autopsies or post-mortem examinations—written report. All dissections, autopsies or other post-mortem examinations involving dissection of any part of the human body, (except preparation of the body for burial or cremation by duly licensed morticians or funeral directors), shall be performed by a physician or surgeon duly licensed to practice such profession by the state board of medical examiners of the state of Montana, and upon completion of any such dissection, autopsy or other post-mortem examination, the physician or surgeon, whether one or more participating, shall deliver a written report thereof, together with his findings as to cause of death, to the next of kin of decedent, or the representative of decedent's estate, or to other persons lawfully requesting such procedures in the cases herein permitted.

History: En. Sec. 2, Ch. 172, L. 1949; **Amendment**
amd. Sec. 20, Ch. 41, L. 1963.

The 1963 amendment substituted "morticians or funeral directors" for "embalmers" in the parenthetical clause.

69-2310. Autopsy performed contrary to law a misdemeanor—persons exempt from law. Every person who shall make, or cause to be made, any dissection of the body of a human being, or to have any autopsy performed thereon, or to have any other post-mortem examination performed and accomplished except as hereinbefore provided, shall be guilty of a misdemeanor. But nothing in this act shall affect, impair or restrict the right of a duly licensed mortician to dissect the dead body of a human to the extent necessary and proper in the preservation or preparation of such body for burial, cremation or other lawful disposition, in all cases as authorized by the laws of Montana.

History: En. Sec. 3, Ch. 172, L. 1949; **Amendment**
amd. Sec. 21, Ch. 41, L. 1963.

The 1963 amendment deleted the words "embalmer, undertaker or" which preceded "mortician" in the second sentence.

CHAPTER 30—MONTANA HOSPITAL SURVEY AND CONSTRUCTION ACT

Section 69-3015. Hospital and medical facilities construction moneys.

69-3015. Hospital and medical facilities construction moneys. The board is hereby authorized to receive federal funds in behalf of, and transmit them to, such applicants. Money received from the federal government for a construction project approved by the surgeon general shall be deposited in the state treasury and shall be used solely for payments due applicants for work performed, or purchases made, in carrying out approved projects. Claims for all payments shall, if approved by the board, bear the signature of the executive officer (secretary) of the board, or in his absence, the director.

History: En. Sec. 16, Ch. 270, L. 1947; amd. Sec. 9, Ch. 215, L. 1955; amd. Sec. 68, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted a former second sentence reading, "There is hereby established, separate and apart from all

public moneys and funds of this state, a hospital and medical facilities construction fund"; substituted "in the state treasury" in the present second sentence for "to the credit of this fund"; and deleted "from the hospital and medical facilities construction fund" which followed "payments" in the final sentence.

CHAPTER 32—STATE BOARD OF HEALTH—MATERNAL AND CHILD HEALTH SERVICES—EDUCATIVE PROGRAM—SCHOOL NURSES—SUPERVISION BY BOARD—AUTHORITY OF COUNTIES AND SCHOOL BOARDS—SERVICES FOR CRIPPLED CHILDREN—EDUCATION FOR CHILDREN AND ADULTS IN USE AND ABUSE OF NARCOTICS

Section 69-3206. Information on infant mortality or morbidity may be furnished.

69-3207. Information to be used only for medical research—identity of persons treated not to be revealed.

69-3208. Information furnished deemed privileged communication.

69-3206. Information on infant mortality or morbidity may be furnished. Any person, hospital, sanatorium, nursing or rest home or other organization may provide information, interviews, reports, statements, memoranda, or other data relating to the condition and treatment of any person to the state board of health, the Montana medical association, any of its allied medical societies, any committees of nationally organized medical societies or research groups, or any in-hospital staff committee, to be used in the course of any study for the purpose of reducing infant morbidity or mortality, and no liability of any kind or character for damages or other relief shall arise or be enforced against any person or organization by reason of having provided such information or material, or by reason of having released or published the findings and conclusions of such groups to advance medical research and medical education, or by reason of having released or published generally a summary of such studies.

History: En. Sec. 1, Ch. 197, L. 1963.

Title of Act

An act providing that information and data concerning infant morbidity and mortality may be provided to the state board of health, the Montana medical association and any of its allied medical societies, any

committees of nationally organized medical societies or research groups, or any in-hospital staff committee, for the purpose of reducing infant morbidity and mortality through study and medical research; providing that no liability shall arise by reason of having furnished any such information or data, or by reason of

having released or published the findings and conclusions of such groups to advance medical research and education, or by reason of having released or published generally a summary of such studies; providing that the identity of any person whose condition or treatment is the subject of any information or data provided

under the terms of this act shall not be revealed under any circumstances; and providing that the information and data received under the terms of this act and the conclusions resulting from studies conducted under the terms of this act shall be privileged communications.

69-3207. Information to be used only for medical research—identity of persons treated not to be revealed. The state board of health, the Montana medical association, any of its allied medical societies, any committees of nationally organized medical societies or research groups, or any in-hospital staff committee shall use or publish said material only for the purpose of advancing medical research or medical education in the interest of reducing infant morbidity or mortality, except that a summary of such studies may be released by any such group for general publication. In all events the identity of any person whose condition or treatment has been studied shall be confidential and shall not be revealed under any circumstances.

History: En. Sec. 2, Ch. 197, L. 1963.

69-3208. Information furnished deemed privileged communication. All information, interviews, reports, statements, memoranda, or other data furnished by reason of this act and any findings or conclusions resulting from such studies are declared to be privileged communications which may not be used or offered or received in evidence in any legal proceeding of any kind or character, and any attempt to use or offer any such information, interviews, reports, statements, memoranda or other data, findings or conclusions or any part thereof, unless waived by the person treated or his legal representative, shall constitute prejudicial error resulting in a mistrial in any such proceeding.

History: En. Sec. 3, Ch. 197, L. 1963.

CHAPTER 34—SANITARIANS

Section 69-3404. Fees.

69-3404. Fees. Applicants for registration shall pay a fee of twenty dollars (\$20.00) at the time of making application. A sanitarian registered under the provisions of this act may renew his certificate by paying an annual fee as set by the board, but not to exceed ten dollars (\$10.00). All fees collected shall be paid to the board of health and deposited by the board in the earmarked revenue fund for the use of the sanitarians registration council. All fees shall be due and payable on or before the first day of July for the current year for which the renewal certificate shall be issued. All certificates shall expire on the renewal date unless renewed prior to such date. Registrations which have lapsed for failure to pay renewal fees may be reinstated under regulations adopted by the council.

History: En. Sec. 4, Ch. 174, L. 1959;
amd. Sec. 119, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "deposited by the board in the earmarked

revenue fund for the use of the sanitarians registration council" for "held in a special fund and shall be used to defray the cost of administration of this act in accordance

with a budget developed by the council and the board" at the end of the third sentence.

CHAPTER 35—MOTORBOAT AND VESSEL REGULATION

Section 69-3502. Definitions.
69-3505. Equipment.

69-3502. Definitions. As used in this act, unless the context clearly requires a different meaning:

(1) "Vessel": for purposes of registration "vessel" shall mean those watercraft described under section 3 of public law 85-911, H.R. 11078 unless otherwise defined by the fish and game commission of the state of Montana; as pertains to the safety regulations of this act "vessel" means every description of watercraft other than a seaplane on the water capable of being used as a means of transportation on water.

(2) to (6). * * * [Same as parent volume.]

(7) The word "board" shall mean the fish and game commission of the state of Montana in all sections of this act, except for section 69-3504, in which section the word "board" shall mean the board of equalization of the state of Montana.

History: En. Sec. 2, Ch. 285, L. 1959;
amd. Sec. 1, Ch. 230, L. 1963.

Amendment

The 1963 amendment added the words "in all sections of this act, except for sec-

tion 69-3504, in which section the word 'board' shall mean the board of equalization of the state of Montana" at the end of paragraph (7); and made a minor change in punctuation.

69-3505. Equipment. Every vessel shall have aboard:

(1) to (4). * * * [Same as parent volume.]

(5) Every motorboat or vessel shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel, equipped with an efficient flame arrester, backfire trap, or other similar device.

(6) The board is hereby authorized to make rules and regulations modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation laws or with the navigation rules promulgated by the United States coast guard.

(7) No person shall operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof.

History: En. Sec. 5, Ch. 285, L. 1959;
amd. Sec. 1, Ch. 138, L. 1961; amd. Sec. 2,
Ch. 230, L. 1963.

Amendment

The 1963 amendment added paragraphs (5), (6), and (7).

Effective Date

Section 3 of Ch. 230, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 9, 1963.

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Part 2

1963 Cumulative Pocket Supplement

Containing

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LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
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THE 1947 REVISED CODES

AND

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MONTANA

A HISTORY

OF THE

LEGISLATIVE PROCESS

THE HISTORY OF THE LEGISLATIVE PROCESS IN MONTANA

BY J. H. HARRIS, JR.

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For index see pocket supplement to Replacement Volume 9

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CHAPTER 4—TELEVISION

Section 70-426. Annexation of contiguous areas—petition—hearing—resolution

70-426. Annexation of contiguous areas—petition—hearing—resolution.
The boundaries of a television district created by authority of Chapter 4 of Title 70 of the Revised Codes of Montana, 1947; may be altered and outlying areas be annexed from territory contiguous thereto in the following manner;

(a) A petition shall be signed by owners of television sets within the proposed area, equal in number to not less than fifty-one per cent (51%) of the registered electors who are owners of television sets within the area to be annexed;

(b) The petition shall designate the boundaries of the contiguous area to be annexed and ask that it be annexed to the existing television district;

(c) The petition shall be transmitted to the clerk and recorder and the hearing and notice thereof shall be the same as provided by sections 70-412 through 70-414, R.C.M. 1947;

(d) After the hearing the board of county commissioners shall adopt a resolution either annexing the area to the existing television district or denying the petition.

History: En. Sec. 1, Ch. 48, L. 1963.

Title of Act

An act providing that boundaries of a television district created by authority of Chapter 4 of Title 70 of the Revised

Codes of Montana, 1947; may be altered and outlying areas may be annexed from territory contiguous to an existing television district; and providing the procedure for such annexation.

TITLE 71—PUBLIC WELFARE AND RELIEF

- Chapter 1. County poor—care of, by county commissioners, 71-123.
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CHAPTER 1—COUNTY POOR—CARE OF, BY COUNTY COMMISSIONERS

Section 71-123. Duty of county clerk.

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Temporary Additional Tax Levy (Laws 1963, Ch. 262)

An act to authorize, in certain instances, the boards of county commissioners to levy an additional tax of not to exceed eleven and one-half (11.5) mills for the county poor funds, providing for an effective date and repealing all acts and parts of acts in conflict herewith.

Section 1. Whenever the boards of county commissioners of counties coming within the provisions of this act find that the total amount that may be derived from all other sources will be inadequate to provide the revenue necessary to meet the appropriations for expenditures to be set forth in the poor fund section of the county budget, such county commissioners shall have the power and the authority to levy, not to exceed eleven and one-half (11.5) mills, or so much thereof as may be necessary, to meet such expenditures, as an additional levy for the county poor fund after receiving a certificate authorizing them so to do, issued by the state board of equalization as in this act provided.

Section 2. On or before the second Monday in July, the boards of county commissioners of counties desiring to avail themselves of the provisions of this act shall submit a certified copy of their county poor fund budget to the state examiner and a like certified copy of such budget to the state department of public welfare. The state examiner shall examine such budget and if it is found by

the state examiner that such budget is in compliance with the laws of this state and the rules and regulations of such examiner's office, he shall so certify and transmit such certified copy of the budget, together with his certificate thereon, to the state board of equalization. The state department of public welfare shall examine such budget and if it finds the expenditures and revenues of the previous year are correct and the estimated expenditures and revenues for the current year are approximately correct, then such department shall transmit such copy, together with its certificate, to the state board of equalization.

Section 3. The state board of equalization shall, on receipt of the certified copies of such county poor fund budget containing certificates as provided in section 2 hereof, examine such documents and if such board finds that a levy as authorized in section 1, or any part thereof, in addition to all other poor fund revenues is necessary, the said board shall certify the amount of the levy to be made by the county commissioners of such county and transmit such certificates to such board of county commissioners who shall thereupon be authorized to make such levy as is authorized.

Section 4. This act shall be in full force and effect from the first day of July, 1963 to the thirtieth day of June, 1965.

Section 5. All acts and parts of acts in conflict herewith are hereby repealed.

71-107. (4465.5) Poor farm.**Cross-References**

Power of county commissioners to lease county property for operation of a boarding home or nursing home for aged persons, sec. 16-1036.

Power of county commissioners to operate boarding home or nursing home for the aged, secs. 16-1037, 16-1038.

71-123. (4539) Duty of county clerk. It shall be the duty of the clerk of the board of county commissioners, upon receiving the report and statement of expenses provided for in this act, to transcribe, in a book to be kept for that purpose, all the facts contained in such report concerning such soldier, sailor, or marine. It shall also be the duty of said clerk, upon receiving the report of the burial of such deceased person, to make application to the proper authorities under the government of the United States for a suitable headstone, as provided by act of Congress, and to cause the same to be placed at the head of the grave of such soldier, sailor, or marine, the expense of which shall not exceed the sum of twenty dollars for cartage of and properly setting up each stone. The expense thus incurred shall be audited and paid as provided in section 71-121 for the burial expenses.

History: En. Sec. 4, Ch. 39, L. 1903; re-en. Sec. 2068, Rev. C. 1907; re-en. Sec. 4539, R. C. M. 1921; amd. Sec. 1, Ch. 146, L. 1963.

Amendment

The 1963 amendment increased the allowance specified near the end of the second sentence from \$10 to \$20.

CHAPTER 2—PUBLIC WELFARE ACT PART 1—TO ESTABLISH A STATE DEPARTMENT OF PUBLIC WELFARE AND COUNTY DEPARTMENTS OF PUBLIC WELFARE

Section 71-217. Staff personnel—how selected, paid and controlled—dismissal.

71-222. Per capita and millage taxes to be levied—expenditures—budgets.

71-204. Authority of board—disclosure of certain information forbidden.**References**

Cited in State ex rel. Lewis and Clark

County v. State Board of Public Welfare,
— M —, 376 P 2d 1002, 1003.

71-217. Staff personnel—how selected, paid and controlled—dismissal. Each county board shall select and appoint from a list of qualified persons furnished by the state department such staff personnel as are necessary. The staff personnel in each county shall consist of at least one qualified staff worker (or investigator) and such clerks and stenographers as may be decided necessary. If conditions warrant, the county board, with the approval of the state department, may appoint some fully qualified person listed by the state department as supervisor of its staff personnel. The staff personnel of each county department are directly responsible to the county board, but the state department shall have the authority to supervise such county employees in respect to the efficient and proper performance of their duties. The county board of public welfare shall not dismiss any member of the staff personnel without the approval of the state department; but the state department shall have the authority to request the county board to dismiss any member of the staff personnel for inefficiency, incompetence or similar cause.

Public assistance staff personnel attached to the county board shall be paid from state public welfare funds, both their salaries and their actual and necessary traveling expenses, and their necessary subsistence expenses when away from the county seat in the performance of their duties; but the county board of public welfare shall reimburse the state department of public welfare, from county poor funds, one-half of the payments so made to its public assistance staff personnel, except that, under circumstances prescribed by the state department of public welfare, the reimbursement by the county board of public welfare may be less than one-half. All other administrative costs of the county department shall also be paid from county poor funds.

On or before the 20th day of the month following the month for which the payments to the public assistance staff personnel of the county were made, the state department of public welfare shall present to the county department of public welfare a claim for the required reimbursements. The county board shall make such reimbursements within twenty (20) days after the presentation of the claim and the state department shall credit (add) all such reimbursements to its account for administrative costs.

History: En. Subd. (b), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 5, Ch. 129, L. 1939; amd. Sec. 1, Ch. 44, L. 1963.

board to reduce reimbursements by county boards to less than one-half.

Amendment

The 1963 amendment added, at the end of the first sentence in the second paragraph, the clause permitting the state

Repealing Clause

Section 2 of Ch. 44, Laws 1963 repealed all acts and parts of acts in conflict therewith.

71-222. Per capita and millage taxes to be levied—expenditures—budgets. It is hereby made the duty of the board of county commissioners in each county to levy the per capita tax of two dollars (\$2.00), and the six (6) mills for the county poor fund as provided by law, or so much thereof as may be necessary. The board shall budget and expend so much of the funds in the county poor fund for all purposes of this act as will enable the county welfare department to pay the general relief activities of the county and to reimburse the state department of public welfare for the county's proportionate share of the administrative costs of the county welfare department and of all public assistance and its proportionate share of any other welfare activity that may be carried on jointly by the state and the county.

The amounts set up in the budget for the reimbursements to the state department shall be sufficient to make all of these reimbursements in full. The budget shall make separate provision for each one of these public assistance activities, and proper accounts shall be established for the funds for each and all of such activities.

As soon as the preliminary budget provided for in section 16-1903 has been agreed upon, a copy thereof shall without delay be mailed to the state administrator of public welfare, and it shall be his duty, at any time before the final adoption of the budget, to make such recommendations with regard to changes in any part of the budget relating to the county

poor fund as is deemed necessary in order to enable the county to discharge its obligations under the Public Welfare Act.

The state administrator shall promptly examine the preliminary budget so submitted to him in order to ascertain if the amounts provided for reimbursements to the state department are likely to be sufficient, and shall notify the county clerk of his findings. It is hereby made the duty of the board to make such changes in the amounts provided for reimbursements, if any are required, that the county will be able to make the reimbursements in full.

The board of county commissioners shall not have the right to make any transfer from the amounts budgeted for reimbursing the state department without having first obtained a statement in writing from the state administrator of public welfare to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

No part of the county poor fund, irrespective of the source of any part thereof, shall be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for general relief expenditures by the county or is needed for paying the county's proportionate share of public assistance, or its proportionate share of any other welfare activity that may be carried on jointly by the state and the county; provided, however, that expenditures for improvement of any county buildings used directly for care of the poor may be made out of any moneys in the county poor fund, whether such moneys are produced by the per capita tax or the six (6) mill levy provided for in paragraph one of this section or from any additional levy authorized or to be authorized by law. Such expenditure shall be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for such buildings by the state board of health, and, when such expenditure has been approved by the state public welfare department.

History: En. Subd. (b), Sec. 11, Part 1, Ch. 82, L. 1937; amd. Sec. 8, Ch. 129, L. 1939; amd. Sec. 3, Ch. 117, L. 1941; amd. Sec. 6, Ch. 199, L. 1951; amd. Sec. 1, Ch. 239, L. 1963.

Amendment

The 1963 amendment added the proviso

to the first sentence of the final paragraph and the entire second sentence of the final paragraph.

Repealing Clause

Section 2 of Ch. 239, Laws 1963 repealed all acts and parts of acts in conflict therewith.

CHAPTER 3—PUBLIC WELFARE ACT PART 2—GENERAL RELIEF—TO PROVIDE AID TO THE UNEMPLOYABLE, DESTITUTE AND THOSE MADE DESTITUTE THROUGH LACK OF EMPLOYMENT AND ALL THOSE IN NEED OF PUBLIC ASSISTANCE NOT ELIGIBLE OR OTHERWISE CARED FOR UNDER OTHER PARTS OF THIS ACT

Section 71-302. Eligibility requirements for general relief.
71-307. Relief by check or disbursing orders.

71-302. Eligibility requirements for general relief. An applicant to be eligible for general relief must have resided in the state of Montana for

at least one (1) year immediately prior to the date of receipt of this assistance. Any person otherwise qualified who has resided in a county for one (1) year shall thereby acquire residence in that county, which residence shall be retained until residence is acquired in another county by residing there for one (1) year. If a person has resided in the state for one (1) year but does not have county residence, he shall make application for this assistance in the county in which he is residing, which county shall bear the cost of his assistance until he has acquired a county residence. If a person is absent from the state voluntarily he shall thereby be ineligible for general relief in the state of Montana. Time spent as a patient in a licensed nursing home or hospital, or a private charitable institution, shall not in any case be counted in determining the matter of county residence.

History: En. Subd. (a), Sec. 2, Part 2, Ch. 82, L. 1937; amd. Sec. 11, Ch. 129, L. 1939; amd. Sec. 4, Ch. 117, L. 1941; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 1, Ch. 99, L. 1963.

Amendment

The 1963 amendment added the last sentence.

71-307. Relief by check or disbursing orders. All relief disbursements by county departments of public welfare shall be by warrant or check; provided, however, that if the county welfare department finds that a recipient is in the habit of dissipating relief allowances instead of using them for the purposes intended, or that for any other reason it is better for the recipient and his family to receive the allowance through disbursing orders, then disbursing orders shall be used instead of cash payments; but all such disbursing orders must be written in such form that the goods and merchandise to be provided may be furnished by any regular dealer in such goods and merchandise within the county. It is further provided, however, that if the county has work available which a recipient of general relief is capable of performing, then the county department of public welfare may require the recipient to perform such work at the prevailing rate of wages paid by that county for similar work to be paid from the county poor fund in place of granting him general relief.

The county department of public welfare shall provide coverage under the Workmen's Compensation Act for those recipients of general relief working under the provisions hereof, and is authorized to enter into such agreements with the industrial accident board as may be necessary to carry out the provisions of this section.

Any recipient of general relief who is subject to the provisions of this section and who without cause refuses to perform work assigned to him as herein provided, shall lose his eligibility for general relief for a period of one (1) week for each refusal.

History: En. Sec. 5, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 129, L. 1939; amd. Sec. 1, Ch. 180, L. 1963.

Amendment

The 1963 amendment substituted "a recipient of" and "recipient" for "an

applicant for" and "applicant" in the second sentence of the first paragraph; inserted "paid by that county for similar work" after "prevailing rate of wages" near the end of the first paragraph; and added the second and third paragraphs.

71-308. Medical aid and hospitalization.**Wandering Child**

County properly brought mandamus action to compel state board of public welfare to reimburse it for medical and hospital expenses for a wandering thirteen-year-old child from another state who roamed from place to place for approxi-

mately one month, without means of support, when she threw herself in front of a moving automobile and sustained the injuries for which the county paid the expenses. State ex rel. Lewis and Clark County v. State Board of Public Welfare, — M —, 376 P 2d 1002, 1004.

CHAPTER 9—PUBLIC WELFARE ACT PART 8—APPROPRIATIONS,
DISPOSITION OF FUNDS AND DISBURSEMENTS

Section 71-901. Receipt of funds.

71-901. Receipt of funds. The treasurer of the state of Montana is hereby designated as the appropriate fiscal officer of the state to receive federal funds. All money appropriated by the legislature for public welfare purposes, all money received from the United States government for public welfare purposes, and all money received from any other source for the purposes set forth in the Public Welfare Act shall be paid into the state treasury to the credit of the state department of public welfare.

History: En. Sec. 1, Part 8, Ch. 82, L. 1937; amd. Sec. 210, Ch. 147, L. 1963.

the credit of the state department of public welfare" for "and constitute a special fund to be designated as the public welfare fund" at the end of the section.

Amendment

The 1963 amendment substituted "to

TITLE 72—RAILROADS

Chapter 2. Railroad companies—general powers and duties, 72-211, 72-224.

CHAPTER 1—RAILROADS—REGULATION BY BOARD OF RAILROAD COMMISSIONERS

72-106. (3784) Repealed.

Repeal

This section (Sec. 6, Ch. 37, L. 1907), relating to salaries of the commissioners,

the secretary, and the stenographer, was repealed by Sec. 1, Ch. 129, Laws 1963, and by Sec. 3, Ch. 212, Laws 1963.

72-108 to 72-110. (3786 to 3788) Repealed.

Repeal

These sections (Secs. 1 to 3, Ch. 109, L. 1919; Sec. 1, Ch. 90, L. 1927), relating

to salaries of employees of the board, were repealed by Sec. 1, Ch. 129, Laws 1963.

CHAPTER 2—RAILROAD COMPANIES—GENERAL POWERS AND DUTIES

Section 72-211. May borrow money and secure payment.
72-224. May issue and secure bonds.

72-211. (6513) May borrow money and secure payment. Any corporation organized under this chapter shall have power to borrow money on the credit of the corporation to an amount not exceeding its authorized capital stock, at a rate of interest to be agreed upon by the respective parties, and may execute bonds therefor in sum of not less than one hundred dollars, and secure the payment thereof by mortgage or pledge of the property and income of such corporation. [Effective January 1, 1965.]

History: En. Sec. 14, p. 102, Ex. L. 1873; re-en. Sec. 312, 5th Div. Rev. Stat. 1879; re-en. Sec. 691, 5th Div. Comp. Stat. 1887; re-en. Sec. 899, Civ. C. 1895; re-en. Sec. 4280, Rev. C. 1907; re-en. Sec. 6513, R. C. M. 1921; amd. Sec. 11-148, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted a second sentence reading, "And if the said mort-

gage shall so provide, it shall be and remain a valid lien upon all of the property of said corporation of whatever kind then existing, or that may thereafter be by it acquired, irrespective of the law now in force relating to chattel mortgages, and the same shall be taken, held, and enforced in the same manner as mortgages upon real estate now are held and enforced"; and made a minor change in phraseology.

72-224. (6526) May issue and secure bonds. Any railroad corporation whose line is wholly or partly within this state, whether chartered by or organized under the law of the state or territory of Montana, or of the United States, or of any other state or territory, shall have authority and power to make, issue[,] negotiate, and deliver its bonds, securities, or obligations to such amount, not exceeding its authorized capital stock, bearing such rate of interest and payable at such time or times as its board of directors shall determine, and may negotiate, sell, pledge, or otherwise dispose of the same at such price, and on such terms, and in such manner as its board of directors may authorize or determine; and to secure the

payment of all or any of such bonds, securities, or obligations, and the interest thereon, may make, execute, and deliver such mortgages or deeds of trust upon all or any part of its property, income, and franchises, as the board of directors may determine or direct. [Effective January 1, 1965.]

History: En. Sec. 706, 5th Div. Comp. Stat. 1887; re-en. Sec. 913, Civ. C. 1895; re-en. Sec. 4294, Rev. C. 1907; re-en. Sec. 6526, R. C. M. 1921; amd. Sec. 11-149, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted from the end of the section clauses reading, "and if any such mortgage or deed of trust shall so provide, and to the extent it shall provide, it shall be and remain a valid lien upon the property, rights, and franchises of the corporation of whatever nature or kind afterwards acquired, as well as upon property, rights, and franchises

owned or possessed by the corporation at the time of its execution, irrespective of the law relating to chattel mortgages, and any such mortgage or deed of trust shall be taken, held, and enforced in the same manner as mortgages of real estate; and the record thereof in the office of the secretary of state shall be notice of its existence and contents to all persons, without any further record thereof, and it shall be the duty of the secretary to record in his office any such mortgage or deed of trust, when presented for that purpose"; and made minor changes in phraseology and punctuation.

CHAPTER 3—LEASES, SALES AND MORTGAGES OF RAILROAD EQUIPMENT AND ROLLING STOCK

72-303. (6535) Repealed.

Repeal

This section (Sec. 3, p. 102, L. 1883; Sec. 1, Ch. 53, L. 1947), relating to chattel

mortgages of railroad equipment, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

72-305 to 72-307. (6537 to 6539) Repealed.

Repeal

These sections (Secs. 1 to 3, pp. 148, 149, L. 1893; Sec. 1, Ch. 148, L. 1923; Sec. 2, Ch. 53, L. 1947; Sec. 14, Ch. 117,

L. 1961), relating to conditional sales and chattel mortgages of railroad equipment, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

TITLE 73—RECORDING TRANSFERS

Chapter 2. Effect of recording or failure to record conveyance of real property, 73-208.

CHAPTER 2—EFFECT OF RECORDING OR FAILURE TO RECORD CONVEYANCE OF REAL PROPERTY

Section 73-208. Validation of conveyances recorded after defective execution.

73-208. Validation of conveyances recorded after defective execution. Any instrument affecting real property, which was, previous to the date this act takes effect, copied into the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after the date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument or in the certificate of acknowledgment thereof, or the absence of any such certificate; and all such instruments heretofore acknowledged by the vice-president and assistant secretary of any corporation, or by either of them, or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation, and recorded, shall be valid and shall have the same force and effect as though acknowledged by the president or secretary; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence, with like effect as copies of any instrument duly acknowledged and recorded.

History: En. Sec. 1, Ch. 63, L. 1963.

Title of Act

An act validating certain instruments affecting real property and which were erroneously executed or acknowledged, notice imparted by recording thereof, and providing that duly certified copies there-

of may be read in evidence, with like effect as copies of an instrument duly executed, acknowledged and recorded.

Repealing Clause

Section 2 of Ch. 63, Laws 1963 repealed all acts and parts of acts in conflict therewith.

TITLE 74—SALES AND EXCHANGE

- Chapter 3. Rights and obligations of seller—delivery and warranty, 74-325.
4. Rights and obligations of buyer—inspection and payment, Repealed—
Section 10-102, Chapter 264, Laws of 1963.
5. Exchange, 74-505.
6. Retail installment sales, 74-608.

CHAPTER 2—CONTRACT FOR SALE OF PERSONAL PROPERTY, WHEN VALID—FILING—SEIZURE ON DEFAULT

74-201, 74-202. (7591, 7592) Repealed.

Repeal

These sections (Secs. 2340, 2341, Civ. C. 1895), a statute of frauds relating to con-

tracts for sales of personal property, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

74-204 to 74-207. (7594 to 7597) Repealed.

Repeal

These sections (Secs. 1 to 3, p. 124, L. 1899; Sec. 1, Ch. 52, L. 1911; Sec. 1, Ch. 146, L. 1919; Sec. 1, Ch. 145, L. 1925; Sec. 1, Ch. 112, L. 1935; Secs. 1 to 3, Ch.

70, L. 1943), relating to contracts for the sale of personal property with title retained by the vendor, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

CHAPTER 3—RIGHTS AND OBLIGATIONS OF SELLER—DELIVERY AND WARRANTY

Section 74-325. Uniform Commercial Code—applicability.

74-321. (7618) Repealed.

Repeal

This section (Sec. 2382, Civ. C. 1895), relating to warranty of wholesomeness of

food sold, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

74-325. Uniform Commercial Code—applicability. This chapter shall not apply to sales subject to the Uniform Commercial Code. [Effective January 1, 1965.]

History: En. 74-325 by Sec. 11-150, Ch. 264, L. 1963.

CHAPTER 4—RIGHTS AND OBLIGATIONS OF BUYER— INSPECTION AND PAYMENT

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

74-401 to 74-403. (7622 to 7624) Repealed.

Repeal

These sections (Secs. 2400 to 2402, Civ. C. 1895), relating to the rights and obli-

gations of the buyer of goods, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

CHAPTER 5—EXCHANGE

Section 74-505. Uniform Commercial Code—applicability.

74-502. (7633) Repealed.**Repeal**

This section (Sec. 2431, Civ. C. 1895), making a statute of frauds applicable to contracts for exchange, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

74-505. Uniform Commercial Code—applicability. The provisions of this chapter shall not apply to exchanges subject to the Uniform Commercial Code. [Effective January 1, 1965.]

History: En. 74-505 by Sec. 11-151, Ch. 264, L. 1963.

CHAPTER 6—RETAIL INSTALLMENT SALES

Section 74-608. Finance charge limitation.

74-608. Finance charge limitation. (a) to (c). * * * [Same as parent volume.] ✓ *See PV*

(d) [Deleted.]

[Effective January 1, 1965.]

History: En. Sec. 8, Ch. 282, L. 1959; amd. Sec. 11-152, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted a subsection (d), for text of which see parent volume.

TITLE 75—SCHOOLS

- Chapter 2. Revenue-producing facilities at university of Montana, 75-216 to 75-223.
3. Control of state educational institutions, 75-301 to 75-303, 75-310.
 7. Montana state college—Montana wool laboratory—agricultural experiment stations, 75-706, 75-723.
 8. Montana grain inspection laboratory, 75-807, 75-811.
 13. The public schools—superintendent of public instruction, 75-1315.
 16. School trustees, 75-1620, 75-1630, 75-1632.
 17. Budget system, 75-1706, 75-1713.1, 75-1723.
 18. School districts, 75-1802, 75-1804, 75-1816.
 22. School day, month and year—holidays—constitution, pioneer and arbor day, 75-2212.
 24. Teachers—powers and duties—election—dismissal, 75-2401.
 25. Teachers' examinations and certificates, 75-2521.
 27. Teachers' retirement system, 75-2701, 75-2707 to 75-2709.
 34. Transportation of pupils, 75-3413, 75-3414.
 35. Free textbooks, 75-3503, 75-3505.
 36. Uniform system of free public schools—state support—schedule of contributions, 75-3611 to 75-3612.3, 75-3613 to 75-3621.
 37. Finance, 75-3701, 75-3706, 75-3722.
 38. Extra taxation for school purposes, 75-3801.
 41. High schools—county—junior and district—joint school systems, 75-4120 to 75-4128, 75-4130, 75-4133, 75-4134, 75-4138, 75-4139, 75-4146.
 42. High schools—county—junior and district—joint school systems continued—vocational education, 75-4230.
 43. Designation of high schools as vocational training centers, 75-4303, 75-4304.
 45. High School Budget Act, 75-4516.1, 75-4518.1.
 46. High school districts—public works, 75-4601.
 48. School lunch program, 75-4802.
 50. Education classes for mentally and physically handicapped children, 75-5001, 75-5003.
 51. Federal aid, 75-5101.

CHAPTER 2—REVENUE-PRODUCING FACILITIES AT UNIVERSITY OF MONTANA

- Section 75-216. Powers of regents enumerated.
- 75-217. Title to facilities.
- 75-218. Borrowing by regents.
- 75-219. State not obligated.
- 75-220. Units of financing.
- 75-221. Restriction on use of state funds.
- 75-222. Previous contracts unimpaired.
- 75-223. Prior obligations not affected.

75-207 to 75-215. Repealed.

Repeal

These sections (Sec. 1, Ch. 158, L. 1961; Secs. 1 to 8, Ch. 232, L. 1961), relating to student housing facilities at the university

of Montana and to the handling of pledged fees therefrom, were repealed by Sec. 9, Ch. 252, Laws 1963.

75-216. Powers of regents enumerated. The regents of the university of Montana may:

(1) Acquire, erect, equip, enlarge and improve, at any unit of the university of Montana, any of the following types of revenue-producing facilities: residence halls, dormitories, apartments and other student

housing facilities; dining rooms and halls and other food service facilities; and student union buildings and facilities.

(2) Rent housing facilities and provide food and other services to the students, officers, guests and employees of the unit at rates that will insure a reasonable net income over operating expenses and will provide for debt service and reserves, and provide for the collection of charges, admissions and fees for the use of other facilities by students and other persons, which charges, admissions and fees shall not be deemed to be tuition within the meaning of section 75-506 of the Revised Codes of Montana, 1947, and may be collected from any or all students.

(3) Hold the net income derived from the operation of such facilities and devote it to debt service and reserves, repairs, replacements and betterments of the facilities or, so far as such net revenues have not been obligated, to the acquisition, erection, equipping, enlarging or improvement of additional facilities of the types described in this section.

(4) Exercise full control and complete management of such facilities.

History: En. Sec. 1, Ch. 252, L. 1963.

Title of Act

An act relating to the acquisition, erection, equipment, enlargement and improvement of housing and other revenue-producing facilities at units of the university of Montana, and the borrowing of funds therefor by the regents by the issuance and sale of negotiable bonds and other securities and the making of purchases on time, payable solely from net

income from rents and board, receipts from charges, admissions or fees for the facilities, and gifts, contributions and grants of funds, without obligating the state of Montana or using state funds except as provided, and the provision of security for such borrowing, and the refunding of outstanding obligations; repealing sections 75-207, 75-208, 75-209, 75-210, 75-211, 75-212, 75-213, 75-214 and 75-215, R. C. M. 1947.

75-217. Title to facilities. The title to all real estate and improvements acquired and erected under the provisions of this chapter shall be taken and held in the name of the state of Montana, except that title to fixtures and equipment purchased on a time or installment basis may remain in the vendor until the latter has been paid.

History: En. Sec. 2, Ch. 252, L. 1963.

75-218. Borrowing by regents. In carrying out the above powers, the regents may:

(1) Borrow money for any purpose or purposes stated in this chapter, including, if deemed desirable by the regents, the payment of interest on the money borrowed for a facility during the construction thereof and for one (1) year thereafter and the creation of a reserve for the payment of bond principal and interest.

(2) Make purchases on a time or installment basis.

(3) Issue bonds, notes and other securities, negotiable or otherwise, secured as provided in this section, including bearer bonds with appurtenant interest coupons, which shall be fully negotiable notwithstanding any limitation on the source of payment thereof, or fully registered bonds, or bonds registered as to ownership of principal only.

(4) Pledge for the payment of the purchase price of any facility or of the principal and interest on bonds, notes or other securities authorized in this chapter or otherwise obligate:

(a) The net income received from rents, board or both in housing, food service and other facilities.

(b) Receipts from student building, activity, union and other special fees prescribed by the regents for all students.

(c) Other income in the form of gifts, bequests, contributions, federal grants of funds, including the proceeds or income from grants of lands or other real or personal property, receipts from athletic contests and collections of admissions and other charges for the use of facilities.

(5) Make payments on loans or purchases from any other available income not obligated for such purposes, including receipts from sales of materials, equipment and fixtures of such facilities, or from sale of the facilities themselves other than land.

(6) Secure any bonds authorized hereunder by a trust indenture between the regents and any bank or trust company within or without the state of Montana, or by a resolution establishing covenants of the regents with the holders of such bonds, relating to the construction, operation, use and insurance of the facilities, the segregation, expenditure and audit of accounts of the bond proceeds and of the income pledged, the establishment and collection of rents, charges, admissions and fees sufficient to provide net income adequate for prompt payment of principal and interest on bonds and creation and maintenance of reserves for that purpose, and such other matters as the regents may determine to be necessary or desirable for the security and marketability of the bonds.

(7) Issue and sell or exchange bonds, secured as provided in this section, for the refunding of any outstanding bonds or other obligations heretofore or hereafter issued by the regents, subject to the following provisions:

(a) Refunding bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds, or may be sold at a price not less than par plus accrued interest. Nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor, except in accordance with the terms of such outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable, if the revenues pledged therefor are not sufficient, but not to refund any bonds or interest due which can be paid from revenues then on hand.

(b) Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby, if they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient, or if the refunding bonds are combined with an issue of new bonds for replacements, repairs, betterment or new facilities, and the lien of such new bonds upon the net income and receipts pledged must be junior and subordinate to the lien of the outstanding bonds refunded, under the terms of the resolution or indenture authorizing the outstanding bonds, as applied to circumstances existing on the date of refunding. Except as authorized in the preceding sentence, refunding bonds shall not be issued

unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least three eighths of one per cent ($\frac{3}{8}$ of 1%) less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(c) In any case where refunding bonds are issued and sold six (6) months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, which is a member of the federal reserve system and has a combined capital and surplus not less than one million dollars (\$1,000,000), and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which such bond may be called for redemption, and to pay and redeem the principal amount of each such bond at maturity or, if prepayable, at its earliest redemption date, and any premium required for redemption on such date; and the resolution or indenture authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom, and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with such escrow funds shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for co-operatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

(d) Revenues or other funds on hand, in excess of amounts pledged by resolutions or indentures authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment, may be used to pay the expenses incurred by the regents for the purpose of such refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents. Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of such bonds and may be invested and disbursed as provided in subsection (c) hereof, to the extent consistent with the resolutions or indentures authorizing such outstanding bonds.

(8) Sell bonds and sell or exchange refunding bonds issued hereunder in such manner and upon such terms as to maturities, interest rates and redemption privileges, and for such price, as the regents shall determine with the approval of the state controller.

History: En. Sec. 3, Ch. 252, L. 1963.

75-219. State not obligated. No obligation created under this chapter shall ever become a charge against the state of Montana, and all such obligations, including principal and interest, shall be payable solely from the sources authorized in this chapter.

History: En. Sec. 4, Ch. 252, L. 1963.

75-220. Units of financing. In creating and discharging obligations under this chapter, all of the revenue-producing facilities at each unit of the university of Montana may be considered as one; but income received at one (1) unit shall not be used to discharge obligations created for facilities at another unit.

History: En. Sec. 5, Ch. 252, L. 1963.

75-221. Restriction on use of state funds. No state funds except those specified in section 3 [75-218] shall be obligated or used for the purposes of this chapter, unless specifically directed by the legislative assembly.

History: En. Sec. 6, Ch. 252, L. 1963.

75-222. Previous contracts unimpaired. This chapter shall not impair any contract, indenture or agreement executed under previous laws.

History: En. Sec. 7, Ch. 252, L. 1963.

75-223. Prior obligations not affected. No provision of this chapter shall affect or impair:

- (1) Any contract or undertaking, or the financing or agreement to finance any contract or undertaking entered into under the provisions of the laws repealed hereby prior to the effective date of this chapter;
- (2) The issuance of bonds to finance facilities authorized or commenced under the laws repealed hereby prior to the effective date of this chapter.

History: En. Sec. 8, Ch. 252, L. 1963.

Effective Date

Section 10 of Ch. 252, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 9, 1963.

Repealing Clause

Section 9 of Ch. 252, Laws 1963 read "Sections 75-207, 75-208, 75-209, 75-210, 75-211, 75-212, 75-213, 75-214 and 75-215, R. C. M. 1947 are repealed."

CHAPTER 3—CONTROL OF STATE EDUCATIONAL INSTITUTIONS

- Section 75-301. General control of state institutions.
 75-302. Local executive boards—creation, residence and powers.
 75-303. Officers—bond of treasurer.
 75-310. Control of expenditures of state institutions.

75-301. (841) General control of state institutions. The general control and supervision of the Montana state university, Montana state college, Montana school of mines, western Montana college of education, eastern Montana college of education and northern Montana college, all being units of the university of Montana, and Montana state school for the deaf and blind are vested in the state board of education.

History: New section recommended by code commissioner, 1921; amd. Sec. 4, Ch. 160, L. 1925; amd. Sec. 1, Ch. 12, L. 1943; amd. Sec. 3, Ch. 158, L. 1945; amd. Sec. 78, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "western Montana college of education" for "Montana state normal college" and "eastern Montana college of education" for "eastern Montana state normal school";

and deleted "the state vocational school for girls, state orphans' home, Montana state industrial school, Montana state training school" which followed "university of Montana."

75-302. (842) Local executive boards—creation, residence and powers.

There shall be an executive board consisting of three (3) members, for each of said institutions named in the preceding section, all of whom shall be appointed by the governor, by and with the advice and consent of the state board of education. The president of such institution shall not be eligible to appointment as a member of the board. At least two (2) of said members shall reside in the county where such institution is located. Said executive board shall have such immediate direction and control, other than financial, of the affairs of such institution as may be conferred on such board by the state board of education, subject always to the supervision and control of said state board.

History: En. Sec. 2, Ch. 73, L. 1909; re-en. Sec. 107, Ch. 76, L. 1913; re-en. Sec. 842, R. C. M. 1921; amd. Sec. 4, Ch. 158, L. 1945; amd. Sec. 3, Ch. 242, L. 1953; amd. Sec. 79, Ch. 266, L. 1963.

Amendment

The 1963 amendment deleted "except-

ing the Montana state industrial school" following "the preceding section" in the first sentence; and deleted from the end of the section a proviso reading, "provided this section shall not apply to the executive board for the state vocational school for girls."

75-303. (843) Officers—bond of treasurer. The board shall elect a chairman and shall also appoint a secretary who may or may not be a member of said board. The treasurer of said board shall be treasurer of the institution, and such secretary and treasurer shall give bond with good and sufficient surety for the faithful performance of his duties as such, and for the faithful accounting for and paying over to, and for the use of said institution, all moneys received by him as treasurer. Said bond shall run to the state of Montana and shall be in such sum as may be designated by the state board of examiners, and when executed shall be approved by said board of examiners. The duties of the chairmen and secretaries of each of said executive boards shall be those usually performed by such officers, or which may be designated by the state board of education or the state board of examiners.

History: En. Sec. 3, Ch. 73, L. 1909; amd. Sec. 107, Ch. 76, L. 1913; re-en. Sec. 843, R. C. M. 1921; amd. Sec. 4, Ch. 242, L. 1953; amd. Sec. 80, Ch. 266, L. 1963.

Amendment

The 1963 amendment deleted "excepting the board of the Montana state industrial school herein provided for" following "The board" at the beginning of the section.

75-310. (850) Control of expenditures of state institutions. The state board of education pursuant to the terms of appropriations of the state legislature or of Congress or of gifts of donors, shall determine the need for all expenditures and control the purposes for which all funds of said institutions shall be spent, subject to the provisions of the law dealing with the state purchasing agent, sections 82-1901 to 82-1923.

History: En. Sec. 13, Ch. 73, L. 1909; re-en. Sec. 110, Ch. 76, L. 1913; re-en. Sec. 850, R. C. M. 1921; amd. Sec. 1, Ch. 82, L. 1951; amd. Sec. 24, Ch. 271, L. 1963.

Amendment

The 1963 amendment substituted "subject to the provisions of the law dealing with the state purchasing agent, sections 82-1901 to 82-1923" at the end of the section for a sentence reading, "Subject to this control and to the provisions of the law dealing with the state purchasing agent, sections 82-1901 to 82-1923, the state board of examiners shall let all contracts, issue all bonds for any and all buildings or improvements, and shall au-

dit all claims to be paid from all moneys; but said state board of examiners shall have authority to confer upon the executive boards of such institutions such power and authority in contracting current expenses, and in auditing, paying and reporting bills for salaries or other expenses incurred in connection with said institutions, as may be deemed by said state board of examiners to be to the best interest of said institution."

75-312. Repealed.**Repeal**

This section (Sec. 1, Ch. 25, L. 1957), relating to the budget committee of the

state board of education, was repealed by Sec. 82, Ch. 266, Laws 1963.

CHAPTER 7—MONTANA STATE COLLEGE—MONTANA WOOL LABORATORY—AGRICULTURAL EXPERIMENT STATIONS

Section 75-706. Designation of station as beneficiary—income from sale of products.
75-723. Disposal of moneys received by laboratory.

75-706. (894) Designation of station as beneficiary—income from sale of products. Until otherwise provided by law the agricultural experiment station, now established at Bozeman, Gallatin county, state of Montana, shall be the beneficiary of the funds in said act mentioned, and shall use and disburse said funds only for the purposes and in the manner provided in said act. The treasurer of the executive board of the agricultural college and agricultural experiment station, at said city of Bozeman, is hereby authorized to receive and shall be the custodian of said funds, and he shall account for said funds and make reports to the secretary of agriculture, as required by said act of Congress.

Any income received from the sale of agricultural products by the agricultural experiment station at Bozeman or by any of the agricultural substations shall be deposited in the state treasury and shall be used to defray the costs of operating the station and substations.

History: En. Sec. 2, Ch. 64, L. 1907; Sec. 741, Rev. C. 1907; re-en. Sec. 894, R. C. M. 1921; amd. Sec. 235, Ch. 147, L. 1963.

Amendment

The 1963 amendment added the second paragraph.

75-723. Disposal of moneys received by laboratory. All moneys collected by the Montana wool laboratory shall be paid to the state treasurer and used by the wool laboratory for the payment of salaries and expenses, including purchase of equipment and supplies, and erection of necessary buildings.

In addition, there is hereby appropriated for the Montana wool laboratory, all federal funds which may by the federal government be provided for the maintenance and operation of said Montana wool laboratory and also all funds which may be received by said laboratory or for its use

and benefit for special purposes incident to, and in harmony with the purpose of said laboratory.

History: En. Sec. 10, Ch. 166, L. 1945; amd. Sec. 238, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the former first paragraph, for text of which see parent volume; and, in the present first

paragraph, substituted "used by the wool laboratory for" for "by him shall be set aside in a special trust fund, from which fund there is hereby appropriated for the use of said wool laboratory as much thereof as may be necessary for."

CHAPTER 8—MONTANA GRAIN INSPECTION LABORATORY

Section 75-807. Fees chargeable for making tests.

75-811. Disposition of fees and annual report of expenditures.

75-807. (908) Fees chargeable for making tests. Samples of wheat sent in by individuals, the results from the testing of which samples are of no general or market value, shall be charged a fee sufficient to cover the cost of making the test. Fees so collected are to be deposited in the earmarked revenue fund to be used in support of the laboratory.

History: En. Sec. 7, Ch. 119, L. 1913; re-en. Sec. 908, R. C. M. 1921; amd. Sec. 236, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "in the earmarked revenue fund" for "in a

fund in charge of the director of the experiment station" in the second sentence; and deleted a third sentence reading, "Any surplus remaining in this fund at the close of the state's biennium shall be turned over to the state treasurer and shall revert to the state general fund."

75-811. (912) Disposition of fees and annual report of expenditures. All fees collected by the Montana grain inspection laboratory for the tests conducted shall be deposited in the earmarked revenue fund to be used in the support of the laboratory. A full report of the expenditures of the laboratory with a statement of the source of the income, whether from state appropriations or from fees collected, shall be made a part of the annual report.

History: En. Sec. 9, Ch. 54, L. 1917; re-en. Sec. 912, R. C. M. 1921; amd. Sec. 237, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "in the earmarked revenue fund" for "in a

fund in charge of the director of the laboratory" in the first sentence; and deleted a former third sentence reading, "Any surplus remaining at the close of the state's biennium shall be turned over to the state treasurer and shall revert to the general fund of the state."

CHAPTER 13—THE PUBLIC SCHOOLS—SUPERINTENDENT OF PUBLIC INSTRUCTION

Section 75-1315. Apportionment of school interest and income moneys.

75-1315. (945) Apportionment of school interest and income moneys. He shall, between the first and tenth day of February of each year, apportion the state school interest and income moneys among the several counties of the state, in proportion to the number of children of school age in each as shown by the last enumeration authorized by law. It shall be the duty of the state board of land commissioners to order a warrant drawn on or before the tenth day of January of each year in the amount of the state school interest and income moneys subject to apportionment.

The state treasurer shall certify such apportionment to the several county treasurers not later than the first Monday in March; provided, that the several county treasurers have fully complied with section 84-4401, in which case the county treasurers, upon receiving notice from the state treasurer of the amounts due their counties from state school interest and income moneys, may deduct said amount from the amount found due the state by their counties and remit the balance to the state treasurer. The superintendent of public instruction shall certify to the county superintendent of schools of each county, the amount apportioned to that county.

History: En. Sec. 1714, Pol. C. 1895; re-en. Sec. 819, Rev. C. 1907; re-en. Sec. 202, Ch. 76, L. 1913; re-en. Sec. 945, R. C. M. 1921; amd. Sec. 226, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "state school interest and income moneys" for "state school fund" in three places; sub-

stituted "order a warrant drawn" in the second sentence for "notify the state auditor"; deleted from the end of the second sentence a clause reading, "and the said auditor, immediately upon receipt of such notification, shall issue his warrant on the state treasurer for the said amount"; and made minor changes in phraseology.

CHAPTER 16—SCHOOL TRUSTEES

Section 75-1620. Expenses of election.
75-1630. Transfer of funds.
75-1632. Duties of trustees.

75-1604. (988) Election in districts of second and third class, etc.

References

State ex rel. Running v. Jacobson, — M —, 370 P 2d 483, 485.

75-1605. (989) Conduct of election.

References

State ex rel. Running v. Jacobson, — M —, 370 P 2d 483, 485.

75-1608. (992) Board of trustees to call election—notice of.

References

State ex rel. Running v. Jacobson, — M —, 370 P 2d 483, 485.

75-1620. (1004) Expenses of election. All the expenses necessarily incurred in the matter of holding any and all elections for school trustees, extra levies, bonds, school sites, disposal of property, or any other election provided by law in any school district, high school building district, or county high school, shall be paid out of the general school funds of the district, or in the case of a high school building district, out of the high school general funds; or in the case of county high schools, out of the county high school general fund. In its discretion, the board of trustees may pay judges of any such election at a rate not to exceed one dollar (\$1) per hour of service in connection with any such election.

History: Ap. p. Sec. 14, p. 145, L. 1897; re-en. Sec. 866, Rev. C. 1907; amd. Sec. 502, ch. 76, L. 1913; re-en. Sec. 1004, R. C. M. 1921; amd. Sec. 1, Ch. 104, L. 1963.

Amendment

The 1963 amendment substantially re-wrote this section. For previous text, see parent volume.

Repealing Clause

Section 2 of Ch. 104, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 104, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

75-1630. (1013) Transfer of funds. Children may attend public elementary schools in districts in the county outside of the district in which they reside, or in a district in an adjoining county, or in a district in a county in another state when the district in such other state adjoins the district in which they reside, or is situated in a county in such other state, which county adjoins the state of Montana, when written permission is secured from the board of trustees of the district in which they are to attend school and when written permission has been given by the county superintendent of schools of the county in which the children reside. Permission must be granted for such attendance in another district within or without the county of such children's residence when the following conditions exist:

1. When a child lives less than three (3) miles from a public elementary school in another district or county and three (3) or more miles from a public elementary school in the district or county of his own residence.

2. When a child resides more than three (3) miles distance from a public elementary school within his own district or county and no transportation is furnished by the home district or county to such school.

3. When regular bus transportation is furnished by a public elementary school in another district or county and his own district or county does not furnish transportation.

Such distances mentioned above shall be measured from the point where the private family dwelling house is situated to the schoolhouse by the shortest traveled route.

4. When a family has children who must attend high school outside of its own district or county and such family also has elementary school children who can more conveniently attend the elementary grades in the same district where the high school is located, provided such elementary children live more than three (3) miles from the home school or that a parent must move to town to provide high school education for his children.

5. When the county superintendent of schools of the county where the child resides, for any other reason than stated above shall approve the attendance of any child in a public elementary school in another county. In approving such attendance in another district or county, the county superintendent shall take in consideration such items as distance to school, road conditions, trading center of parents, opportunity to live with relatives, dormitory facilities, living conditions, transportation and type of educational program.

If the board of trustees of the district to be attended shall find that, due to insufficient room and overcrowding the accreditation of the receiving school in the ensuing school year would be adversely affected by acceptance of a transfer pupil from another school district, the board may

disapprove the attendance provided it mails written notice of disapproval to the parents or guardian of the pupil within fifteen (15) days after written notification by the county superintendent of the proposed attendance.

In the event that the residence, for determining tuition obligations, of such child is in dispute, then the rules for determining residence as outlined in section 83-303, shall be used by the county superintendent of the county of the child's residence, or in case the dispute is between districts of two counties by the county superintendents of such counties, to finally determine the residence of such child.

When approval of attendance in another district within or without the county has been granted, the district in which such child resides shall pay to the school district where such child attends, an amount based on the following tuition rates: in the case of attendance at an elementary school with an average number belonging up to one hundred (100), the tuition to be paid shall be two hundred twenty-five dollars (\$225); where the school attended has an average number belonging between one hundred one (101) and three hundred (300), the tuition shall be two hundred dollars (\$200); and where the school attended has an average number belonging over three hundred (300), the tuition rate shall be one hundred seventy-five dollars (\$175) per pupil.

It is hereby made the duty of the board of school budget supervisors in approving the budgets, to include therein an item to care for the above tuition, if this has not already been done by the board of trustees in preparing the budget for the district.

Applications for permission to attend a school outside the district or county shall be made to the county superintendent before July 1, previous to the year of attendance, excepting in those cases where circumstances prevent such application. These applications are to be approved or disapproved, except as otherwise provided by law, by the county superintendent, and by the trustees of the district the pupil wishes to attend. However, nothing in this section shall be so construed as to deny a parent whose children cannot qualify under this section the right to send his children, at his own expense, to a public elementary school of any other district willing to accept them. Such parent must pay to the receiving district, tuition in the amount set forth herein.

At the close of the school term of the year in which such pupil attends this school outside the district, the clerk of such district shall transmit to the county superintendent the names of pupils from other districts attending his school, together with the number of days attended. This information in turn shall be transmitted by the county superintendent to the districts affected and such district shall reimburse the school attended for all pupils of its district; provided such pupil has attended at least forty (40) days. This amount of reimbursement shall be made an item of the budget for the coming year and reimbursement shall be made to the district of attendance out of the first funds available to the budget; provided, however, that the trustees of the district receiving pupils from another district may waive any or all tuition; provided, however, that such waiver must apply equally to all pupils, and provided, further, that

the amount of this tuition shall not reduce the foundation program of the school paying it, but shall be an additional item added to it to be raised without a vote of the people; and provided further, that the district receiving the tuition may apply it against the needs of the budget after the regular district, county and state aid have been received.

In the case of a district which does not operate a school, the amount of this tuition can be raised without a vote of the people if the five (5) mill district levy and other local revenue is insufficient to raise the amount needed.

It shall be the responsibility of the superintendent of schools and the board of trustees of the public elementary school receiving the pupils and county superintendent of schools of the county of the pupils' residence to determine and agree upon eligibility of pupils transferring under the provisions of this act; provided, that an appeal may be taken to the state superintendent of public instruction.

Whenever elementary pupils residing in Montana are approved for attendance in an elementary school in an adjoining state; and whenever elementary pupils in an adjoining state are approved for attendance in an elementary school in Montana, the above schedule of tuition payments may be waived and payments arrived at on a reciprocal basis with the state involved. The state superintendent of public instruction is hereby authorized to negotiate with the state superintendent of public instruction of each state involved in arriving at tuition payments, which may either be on a per pupil basis of a flat amount or on an actual cost basis.

Whenever a child has been declared by a district court of the state of Montana a dependent and neglected child as defined in section 10-501, or a juvenile delinquent child, as defined in section 10-602, and has been ordered to be placed in a duly licensed child care institution in the state of Montana, which institution is approved by the state department of public welfare, and as a result of such order such child is required to attend a public elementary school in a school district outside of the district in which he resides, the district receiving such pupil shall be entitled to receive tuition on the basis of the schedule established in this act, provided that the geographical relationship of the receiving district to the district of residence shall be of no consequence. All other provisions of this section, excepting solely the geographical relationship of the districts, shall be applicable to the payment of tuition for the education of such child.

History: En. Sec. 507, Ch. 76, L. 1913; amd. Sec. 12, Ch. 196, L. 1919; re-en. Sec. 1013, R. C. M. 1921; amd. Sec. 1, Ch. 109, L. 1929; amd. Sec. 2, Ch. 217, L. 1939; amd. Sec. 1, Ch. 203, L. 1943; amd. Sec. 2, Ch. 207, L. 1951; amd. Sec. 1, Ch. 21, L. 1953; amd. Sec. 1, Ch. 99, L. 1959; amd. Sec. 1, Ch. 228, L. 1961; amd. Sec. 1, Ch. 107, L. 1963; amd. Sec. 1, Ch. 176, L. 1963; amd. Sec. 1, Ch. 251, L. 1963.

Compiler's Note

This section was amended three times in 1963, once by Ch. 107, once by Ch. 176,

and once by Ch. 251. None of the amendatory acts mentioned nor included the changes made by either of the other amendatory acts. Since the amendments do not appear to conflict, however, the compiler has made a composite section incorporating all three amendments.

Amendments

Chapter 107, Laws 1963, added the final paragraph.

Chapter 176, Laws 1963, added the third and fourth sentences to the fifth paragraph after the numbered paragraphs; and

inserted the words "provided, however, that such waiver must apply equally to all pupils, and" in the third sentence of the sixth paragraph after the numbered paragraphs.

Chapter 251, Laws 1963, inserted the first paragraph after the numbered paragraphs.

75-1632. (1015) Duties of trustees. Every school board unless otherwise specially provided by law shall have power and it shall be its duty:

1 to 6. * * * [Same as parent volume.]

7. To repair and insure schoolhouses and to rent, lease and let to such persons or entities as the board may deem proper, the grade school halls, gymnasium and buildings, school owned employee housing and part thereof for such time and rental as the board may designate. All rentals shall be paid to the county treasurer for the credit of the school district. Such rentals may be credited to the school housing or rental fund of the district, the general school fund of the district or used to retire outstanding bonds issued by the district. Provided, however, that any expense incurred due to such rentals may be paid out of said rental or housing account, and provided further that any balance in such fund over three thousand dollars (\$3,000) at the end of the school year shall be transferred to the general fund.

8 to 10. * * * [Same as parent volume.]

11. When deemed advisable, to employ a physician or registered nurse to make inspection into the sanitary conditions of the school and the general health conditions of each pupil, and to make a full, detailed report to the board of trustees. The clerk of the district shall furnish immediately to each parent or guardian a copy of such portion of the above mentioned report as pertains to his child or ward.

12 to 24. * * * [Same as parent volume.]

History: Earlier acts governing the duties of trustees were the following: Sec. 27, p. 625, Cod. Stat. 1871; re-en. Sec. 26, p. 126, L. 1874; re-en. Sec. 1113, 5th Div. Rev. Stat. 1879; amd. Sec. 6, p. 55, L. 1883; amd. Sec. 1885, 5th Div. Comp. Stat. 1887; amd. Sec. 1797, Pol. C. 1895; amd. Sec. 5, p. 130, L. 1897; re-en. Sec. 875, Rev. C. 1907. The above section was enacted as Sec. 508, Ch. 76, L. 1913; Subds. 1-10 were amended by Sec. 1, Ch. 61, L. 1917; Subd. 11 amd. by Sec. 1, Ch. 61, L. 1917; and Sec. 13, Ch. 196, L. 1919; Subds. 12-13-14 re-en. Sec. 1, Ch. 61, L. 1917; Subd. 15 was amd. by Sec. 1, Ch. 61, L. 1917, and by Sec. 2, Ch. 81, L. 1917; Subds. 16-17-18 re-en. Sec. 1, Ch. 61, L. 1917; Subds. 19-20-21-22 re-en. Sec. 1, Ch. 61, L. 1917; re-en. Sec. 1015, R. C. M. 1921; amd. Sec. 1, Ch. 122, L. 1923; amd. Sec. 1, Ch. 122, L. 1931; amd. Sec. 1, Ch. 165, L. 1937; amd. Sec. 1, Ch. 103, L. 1943; amd. Sec. 3, Ch. 207, L. 1951; amd. Sec. 1, Ch. 233, L. 1953; amd. Sec. 1, Ch. 228, L. 1955; amd. Sec. 1, Ch. 168, L. 1959;

Effective Date

Section 2 of Ch. 107, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

amd. Sec. 1, Ch. 105, L. 1961; amd. Sec. 1, Ch. 76, L. 1963; amd. Sec. 1, Ch. 175, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 76 and once by Ch. 175. Neither amendatory act mentioned nor included the changes made by the other. Since the amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments.

Amendments

Chapter 76, Laws 1963, deleted the words "To provide clothing and medical aid for indigent children when it shall be made to appear that such aid is needed; and" which appeared at the beginning of subd. 11.

Chapter 175, Laws of 1963, inserted the words "school owned employee housing" in the first sentence of subd. 7; and added the third and fourth sentences to subd. 7.

CHAPTER 17—BUDGET SYSTEM

Section 75-1706. Preparation and adoption of preliminary budget.

75-1713.1. Changes in budget by budget board when in excess of foundation program—restrictions on budgets.

75-1723. Fixing tax levy.

75-1706. (1019.6) Preparation and adoption of preliminary budget.

At the regular meeting of the board of trustees of each school district on the fourth Monday in June such board must consider, prepare and adopt a preliminary budget for the next ensuing school year. Any taxpayer in the district may appear at such meeting and be heard in regard to the preliminary budget or any item or amount proposed to be included therein. Such meeting may be continued from day to day, but not exceeding three (3) days in all; provided, that in first and second class districts such meeting may be continued over a period of not more than five (5) days. When the board has determined the amount necessary to be expended for each item contained in such budget form there shall be entered in column 2 of section I and in column 2 of section II of the budget form the amount proposed to be expended during the ensuing fiscal year for each item contained in such form, and such preliminary budget shall then be signed by a majority of the trustees and the clerk of the district, and the clerk of the district must deliver or transmit such preliminary budget, when so filled in and signed, to the county superintendent of schools on or before the first day of July. If the estimated expenditures set forth in either lines 2 or 4 shall provide for payment of salary or compensation to more than one (1) person, there shall be set forth on a separate sheet but attached to and made a part of such preliminary budget, each position or employment with the salary or compensation to be paid to each person filling the same.

The elementary school budget for any school district in which no elementary school will be operated in the next ensuing school year shall consist of a single budget for the nonoperating fund, which fund shall incorporate all previously existing funds of the school district. Such budget for the nonoperating fund shall include all budgeted items of the district for the ensuing year, including any tuition payments to be made to the other districts, any transportation obligations, any maintenance of school district property and any other items deemed necessary by the board of trustees of the school district.

History: En. Sec. 6, Ch. 146, L. 1931;
amd. Sec. 2, Ch. 63, L. 1941; amd. Sec. 1,
Ch. 182, L. 1963.

Amendment The 1963 amendment added the second paragraph.

75-1713.1. Changes in budget by budget board when in excess of foundation program—restrictions on budgets. If the total amount of the proposed elementary general fund expenses in the preliminary budget of any district shall exceed the foundation program of such district, the budget board shall, in the manner and subject to the limitations prescribed by section 75-1713, reduce such proposed general fund expenses to a total equal to said foundation program unless the board of trustees of said district shall establish to the satisfaction of the budget board that

special circumstances exist which justify such additional expenses, and in such event a statement of the reasons for the allowance of such additional expenses shall be attached to said budget and signed by the chairman of the budget board, but the entire amount of such excess expense over the foundation program shall be paid solely from levies upon the property in such district and shall not in any manner increase the amounts to be apportioned hereunder from the county common school levy or from the moneys available for state equalization aid; and provided, that, except in the case of the existence of the emergencies specified in section 75-1716, the entire amount of such additional expense over the foundation program shall not be greater than the maximum amounts in accordance with the following schedules: provided that nothing herein contained shall be construed as preventing the voting of an additional levy in accordance with the general school laws pertaining to the voting of additional levies.

Elementary Schools

(1) For each elementary school having an ANB of nine (9) or fewer pupils, the maximum shall be fifty-three hundred twelve dollars (\$5,312.00), if said school is approved as an isolated school; if said school is not approved as an isolated school, then the maximum shall be twenty-six hundred fifty-six dollars (\$2,656.00).

(2) For schools with an ANB of ten (10) pupils, but less than eighteen (18) pupils, the maximum shall be fifty-three hundred twelve dollars (\$5,312.00) plus one hundred fifty-six dollars (\$156.00) per pupil on the basis of the average number belonging over nine (9).

(3) For schools with an ANB of eighteen (18) pupils and employing one teacher, the maximum shall be sixty-seven hundred sixteen dollars (\$6,716.00) plus sixty-two dollars and fifty cents (\$62.50) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB over twenty-five (25).

(4) For schools with an ANB of eighteen (18) pupils and employing two full-time teachers, the maximum shall be twelve thousand sixty-two dollars (\$12,062.00) plus sixty-two dollars and fifty cents (\$62.50) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB over fifty (50).

(5) For schools having an ANB in excess of forty (40) the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

For a school having an ANB of more than forty (40) and employing a minimum of three (3) teachers, the maximum of four hundred twenty-five dollars (\$425.00) shall be decreased at the rate of thirty-two cents (\$.32) for each additional pupil until the total number (ANB) shall have reached a total of one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of four hundred six dollars (\$406.00) shall be decreased at the rate of thirty-eight cents (\$.38) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum shall not exceed three hundred thirty

dollars (\$330.00) for each pupil; provided that the maximum per pupil, for all pupils, ANB, shall figure on the basis of the amount allowed herein on account of the last eligible pupil, ANB, and provided further that all schools operated within the incorporated limits of a city or town shall be treated as a school unit for the purpose of this schedule.

The maximum per pupil for all pupils (ANB) and for all schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB.

On or before January 1 of odd-numbered years, the state superintendent of public instruction shall transmit to the legislative assembly of the state of Montana a revised schedule for elementary schools in accordance with classifications by size as set forth in this section. This revised schedule will be based on the median general fund budgeted expenditures for the current year, by ascertaining the median of the general fund budgets for each classification of elementary schools, and the total number of pupils (ANB) for all schools in each classification, and by computing the revised schedule therefrom.

History: En. Sec. 9, Ch. 199, L. 1949; amd. Sec. 1, Ch. 208, L. 1951; amd. Sec. 1, Ch. 267, L. 1963.

Amendment

The 1963 amendment substituted "moneys available for state equalization aid" for "state public school equalization fund" immediately before the first pro-

viso; inserted "plus the foundation program" before "to be included in the budget" in the first proviso; substituted "the maximum amounts in accordance with the following schedules" at the end of the first proviso for "thirty per cent (30%) of the foundation program of any school"; and added everything after the first paragraph.

75-1723. (1019.19) Fixing tax levy. The county superintendent of schools, as clerk of the school budget board, shall, when the board of county commissioners meet on the second Monday in August for the purpose of fixing tax levies, lay before such board the elementary school budgets for all school districts in the county, as finally adopted and approved by the school budget board.

It shall further be the duty of the county commissioners of each county in the state to fix and levy a tax for each school district in the county within the limitations prescribed by this act in such number of mills as will produce the amount shown by the final budget to be raised by tax levy which may also include a reserve fund, not to exceed thirty-five per cent (35%) of the amount appropriated in the final and approved budget for the then current school year, for the purpose of maintaining the elementary and high school of the district from July 1 to November 30 of the next succeeding year; provided that such school district tax plus federal reimbursements in lieu of taxes shall not, unless approved by a vote of the taxpaying electors, exceed the maximum budgets set forth in section 75-1713.1, R.C.M. 1947.

To finance the approved nonoperating budget of any school district in which no elementary school will be operated, the county commissioners shall fix and levy a tax for such school district in such number of mills as will produce the amount shown by the approved budget to be raised by tax levy, after deducting from the total amount to be financed the following:

(1) any net nonoperating fund cash balance; provided, that whenever a nonoperating district did not have a nonoperating fund the preceding year, the net cash balances in all of the regular funds of the district shall be combined to form a single balance which shall be called the nonoperating fund cash balance; provided, further, that any district which operated at least one (1) school in the year immediately preceding the budget year may retain separately any cash balance previously designated as its general fund cash reserve, if in the judgment of the trustees of such district the retention of such general fund cash reserve is essential to the operation of a school anticipated for the year following the budget year, and any such retained cash reserve shall not be deducted from the total amount required for the nonoperating budget;

(2) the amount of any transportation reimbursement anticipated from the county;

(3) the amount of any transportation reimbursement anticipated from the state public school equalization fund; and

(4) any miscellaneous revenues available to the district. The remainder of the nonoperating budget amount, after deduction of the above revenues, shall be financed by a tax levied on the taxable valuation of the property of the school district.

History: En. Sec. 19, Ch. 146, L. 1931; amd. Sec. 10, Ch. 199, L. 1949; amd. Sec. 2, Ch. 208, L. 1951; amd. Sec. 1, Ch. 247, L. 1953; amd. Sec. 1, Ch. 247, L. 1961; amd. Sec. 2, Ch. 182, L. 1963; amd. Sec. 2, Ch. 267, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 182 and once by Ch. 267. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments.

Amendments

Chapter 182, Laws 1963, added the third paragraph, including the clauses numbered (1) to (4).

Chapter 267, Laws 1963, deleted from the end of the first paragraph clauses reading, "and it shall be the duty of the county commissioners of each county in the state to fix and levy a tax of five (5) mills on the dollar of the taxable value of all school districts within the county, provided that if a levy of less than five (5) mills will be sufficient to meet the

approved budget of any school district, then such lesser levy shall be made, but no school district levying less than five (5) mills shall receive any apportionment from the state public school equalization fund"; and substituted "the maximum budgets set forth in section 75-1713.1, R. C. M. 1947" at the end of the second paragraph for "the rate of levy required to produce an amount equal to the foundation program and the additions thereto, within the limitations of thirty per cent (30%), hereinbefore specified, and provided, further, that such last mentioned additional school district tax shall not, in any event, exceed fifteen (15) mills unless the excess above said fifteen (15) mill limitation shall first have been authorized at an election held in accordance with the general school laws pertaining to the voting of additional levies, save and except that in any district wherein more than fifteen (15) mills is required to reach the thirty per cent (30%) limit above the foundation program, such increase above the fifteen (15) mill limit may be financed by federal reimbursements in lieu of taxes without a vote of the taxpayers up to the thirty per cent (30%) limit above the foundation program."

CHAPTER 18—SCHOOL DISTRICTS

Section 75-1802. Classifications of districts—number of trustees.

75-1804. Limitation in creating or changing boundaries of districts.

75-1816. Budget and tax levy in joint districts.

75-1802. (1021) Classifications of districts—number of trustees. All districts having a population of eight thousand (8000) or more shall be

districts of the first class. All districts having a population of one thousand (1000) or more, and less than eight thousand (8000) shall be districts of the second class, and all districts having a population of less than one thousand (1000) shall be districts of the third class. In districts of the first class the number of trustees shall be seven (7); in districts of the second class the number of trustees shall be five (5), and in districts of the third class the number of trustees shall be three (3).

Whenever the population of any school district shall increase beyond or decrease below the number required as specified above for a certain class of school district, the county superintendent of schools shall declare such school district to be changed to the proper class. The county superintendent may compute the population by multiplying by three the number of school census children in the district. No school district shall be changed in classification more than once in any five (5) year period. The county superintendent of schools shall take the necessary steps to provide that at the next school election to elect the proper number of school trustees as designated above and to fill all vacancies due to any change of classification. Provided however that the provisions of this act shall not affect the terms of trustees heretofore elected.

History: En. Sec. 401, Ch. 76, L. 1913; re-en. Sec. 1021, R. C. M. 1921; amd. Sec. 1, Ch. 85, L. 1943; amd. Sec. 1, Ch. 203, L. 1963.

"as determined by the federal census next preceding" which followed "class of school district" in the first sentence of the second paragraph; and inserted the second and third sentences of the second paragraph.

Amendment

The 1963 amendment deleted the words

75-1804. (1023) Limitation in creating or changing boundaries of districts. No school district shall be created nor boundaries changed between March 1st and July 1st of any calendar year; provided, that this limitation shall not apply to boundary changes made under section 75-1813.

History: En. Sec. 1760, Pol. C. 1895; re-en. Sec. 849, Rev. C. 1907; re-en. Sec. 403, Ch. 76, L. 1913; amd. Sec. 1, Ch. 69, L. 1917; re-en. Sec. 1023, R. C. M. 1921; amd. Sec. 1, Ch. 18, L. 1923; amd. Sec. 1, Ch. 37, L. 1933; amd. Sec. 1, Ch. 56, L. 1961; amd. Sec. 1, Ch. 140, L. 1963.

Repealing Clause

Section 2 of Ch. 140, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 140, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 2, 1963.

Amendment

The 1963 amendment added the proviso.

75-1816. (1036.1) Budget and tax levy in joint districts. The board of school trustees of each joint school district shall consider, prepare and adopt a preliminary budget according to the provisions of section 75-1706, provided that a copy of such budget shall be transmitted to the county superintendent of schools of each county in which any part of such joint school district is situated. The county superintendents of all such counties must, either by correspondence, meetings, or in some other manner, ascertain and determine the number of mills which should be levied in such joint school district for each fund for which a levy is to be made. After ascertaining and determining the number of mills which should be levied for each said fund, in the manner herein provided, all such county superintendents of schools shall make and sign a joint statement, addressed to the

board of county commissioners of each county in which a part of the joint school district is situated, setting forth the number of mills which should be levied for each fund, as so ascertained and determined by such county superintendents, by the boards of county commissioners of such counties, and shall deliver or transmit one copy of such statement to each such board of county commissioners not later than the Saturday immediately preceding the second Monday in August.

The number of mills to be levied on all of the property of such joint district for each tax-supported fund shall be determined in accordance with the general laws pertaining to tax levies for school districts, provided that the following exceptions to general financing procedures shall be made:

(a) In the general fund budget and solely for the purpose of determining the amounts of county equalization aid to be allocated to the joint district for its foundation program, the total foundation program amount of the joint district shall be considered as consisting of as many separate foundation programs as there are counties in which any portion of the joint district is situated. The amount of each such separate foundation program shall bear to the total amount of the foundation program the same relationship that the number of ANB pupils in the joint district residing in each such county bears to the total ANB of the joint district. To the requirements of each such separate foundation program shall be applied the estimated state interest and income payment based on the number of census pupils in such portion. The amount of county equalization aid to be allocated to such separate foundation program shall then be determined in accordance with the provisions of section 75-3618. Following the determination of the amount of county equalization aid from each county in which any portion of the joint district is situated, the total remaining requirements of the general fund budget shall be financed in accordance with the general laws, provided that, to receive state equalization aid, such joint district must apply to its foundation program all district revenue from the state permanent school fund.

(b) In the transportation fund budget and solely for the purpose of apportioning among the counties wherein any portion of the joint district is situated the amount of county reimbursement for elementary transportation to be allocated to the joint district, the obligation for the total amount of such county reimbursement shall be distributed among such counties in the same proportion as the ANB of the joint district is distributed by residence in each such county.

History: En. Sec. 1, Ch. 105, L. 1925; amd. Sec. 2, Ch. 182, L. 1951; amd. Sec. 3, Ch. 151, L. 1961; amd. Sec. 3, Ch. 267, L. 1963.

Amendment

The 1963 amendment deleted from the

end of the third sentence of paragraph (a) the words "plus the estimated revenue to be derived from a levy of five mills on the dollar of the taxable value of the property in such portion"; and deleted from the end of paragraph (a) the words "and a district-wide five-mill levy."

75-1832. (1039.8) Failure to properly keep books—penalty, etc.

Clerk of School Board

The clerk of a school district board of trustees does not perform any of the sovereign functions of government; consequently, he is an employee rather than

a public officer, so that quo warranto is not available to test the right to the position. State ex rel. Running v. Jacobson, — M —, 370 P 2d 483, 486.

CHAPTER 19—CLERKS OF SCHOOL DISTRICTS—SCHOOL CENSUS

75-1901. (1049) Clerk—duties of.

Nature of Position

The clerk of a school district board of trustees does not perform any of the sovereign functions of government; consequently, he is an employee rather than a

public officer, so that quo warranto is not available to test the right to the position. State ex rel. Running v. Jacobson, — M —, 370 P 2d 483, 486.

CHAPTER 22—SCHOOL DAY, MONTH AND YEAR—HOLIDAYS—
CONSTITUTION, PIONEER AND ARBOR DAY

Section 75-2212. Arbor day—date of.

75-2212. (1068) Arbor day—date of. The last Friday of April in each year shall be known throughout the state of Montana as Arbor day.

History: En. Sec. 2040, 5th Div. Comp. Stat. 1887; amd. Sec. 1990, Pol. C. 1895; amd. Sec. 1, Ch. 11, L. 1907; re-en. Sec. 1022, Rev. C. 1907; amd. Sec. 1, Ch. 83, L. 1909; re-en. Sec. 1401, Ch. 76, L. 1913; re-en. Sec. 1068, R. C. M. 1921; amd. Sec. 1, Ch. 61, L. 1963.

Friday of April" for "second Tuesday of May."

Effective Date

Section 2 of Ch. 61, Laws 1963 provided that the act should be effective immediately upon its passage and approval. Approved February 21, 1963.

Amendment

The 1963 amendment substituted "last

CHAPTER 24—TEACHERS—POWERS AND DUTIES—ELECTION
—DISMISSAL

Section 75-2401. Re-election of teachers—when automatic—acceptance.

75-2401. (1075) Re-election of teachers—when automatic—acceptance.

After the election of any teacher or principal for the fourth consecutive year in any school district in the state, such teacher or principal so elected shall be deemed re-elected from year to year thereafter at the same salary unless the board of trustees shall by majority vote of its members on or before the first day of April give notice in writing to said teacher or principal that he has been re-elected or that his services will not be required for the ensuing year, but in this written notice, the board of trustees, if requested by the teacher or principal, must declare clearly and explicitly the specific reason or reasons for the failure of re-employment of such teacher. The teacher or principal, if he so desires, shall be granted a hearing and reconsideration of such dismissal, before the board of trustees of that school district. The request for a hearing and reconsideration must be made in writing and submitted to the board of school trustees within ten (10) days after receipt of notice of dismissal. The board of trustees must hold a hearing and reconsider its action within ten (10) days after receipt of such request for a hearing and reconsideration. Provided that nothing in this act shall be construed to prevent the re-election of such teacher or principal by such board at an earlier date, and also provided that in case of re-election of such teacher or principal, he shall notify the board of trustees in writing within twenty (20) days after the notice of such re-election of his acceptance of the position tendered

him for another year and failure to so notify the board of trustees shall be regarded as conclusive evidence of his nonacceptance of the position.

The board of trustees of any school district or county high school may terminate the services for the ensuing year of any teacher who has attained, or will attain the age of sixty-five (65) years before the following first day of September, by giving notice in writing before the first day of April that his services will not be required for the ensuing year, provided, however, that a board of trustees may in its discretion continue to employ a teacher until the age of seventy (70) years has been attained.

History: En. Sec. 801, Ch. 76, L. 1913;
re-en. Sec. 1075, R. C. M. 1921; amd. Sec.
1, Ch. 87, L. 1927; amd. Sec. 1, Ch. 166,
L. 1949; amd. Sec. 1, Ch. 26, L. 1957;
amd. Sec. 1, Ch. 144, L. 1963.

Amendment

The 1963 amendment added the second paragraph.

CHAPTER 25—TEACHERS' EXAMINATIONS AND CERTIFICATES

Section 75-2521. Fees for certificates for teaching.

75-2521. Fees for certificates for teaching. For the issuance, renewal or extension of a certificate to teach, each applicant for such certificate shall pay a fee of one dollar (\$1.00) for each year that the certificate is in force. Such fee shall be paid to the state superintendent of public instruction, who shall deposit such fees with the state treasurer to the credit of the general fund.

History: En. Sec. 10, Ch. 142, L. 1949;
amd. Sec. 62, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "to the credit of the general fund" at the end of the second sentence for "and report

each month to the state auditor the amount of fees collected"; and deleted a third sentence reading, "The state auditor shall credit all such fees to the division of certification of the state department of public instruction."

CHAPTER 27—TEACHERS' RETIREMENT SYSTEM

Section 75-2701. Definitions.

75-2707. Benefits.

75-2708. Management of moneys.

75-2709. Method of financing.

75-2701. Definitions. The following words and phrases used in this act shall have the following meanings unless a different meaning is plainly required by the content:

(1) to (12). * * * [Same as parent volume.]

(13) "Earnable compensation" shall mean the full rate of the compensation, pay or salary that would be payable to a teacher if he worked the full normal working time except that any compensation in excess of seven thousand dollars (\$7,000) per annum, shall not be used for the purpose of this system provided that any teacher who received a salary or compensation in excess of five thousand seven hundred dollars (\$5,700) per annum subsequent to July 1, 1961, may use such salary or that portion of it not in excess of seven thousand dollars (\$7,000) as a basis of compensation for the purpose of this system if (a) he contributes five per cent (5%) of the excess of such salary subsequent to July 1, 1961 over

five thousand seven hundred dollars (\$5,700) and not exceeding seven thousand dollars (\$7,000) to his individual account in the annuity savings fund and (b) he contributes three and one-half per cent (3½%) of the excess of his salary subsequent to July 1, 1961, over five thousand seven hundred dollars (\$5,700) and less than seven thousand dollars (\$7,000) to the pension accumulation fund. In cases where compensation includes maintenance, the retirement board shall fix the value of that part of the compensation not paid in money.

(14) to (22). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 87, L. 1937; subd. (7) amd. Sec. 1, Ch. 202, L. 1939; amd. Sec. 1, Ch. 215, L. 1939; amd. Sec. 1, Ch. 137, L. 1945; amd. Sec. 1, Ch. 28, L. 1949; amd. Sec. 1, Ch. 216, L. 1953; amd. Sec. 1, Ch. 235, L. 1959; amd. Sec. 1, Ch. 209, L. 1963.

amounts set forth in paragraph (13) from \$6,000 to \$7,000 in three places, and from \$5,000 to \$5,700 in three places; and substituted "July 1, 1961" for "July 1, 1957" in three places in paragraph (13).

Repealing Clause

Section 2 of Ch. 209, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1963 amendment increased the

75-2707. **Benefits.** (1). * * * [Same as parent volume.] ✓

(2) Allowance on superannuation retirement. Upon superannuation retirement a member shall receive a superannuation retirement allowance which shall consist of:

(a) An annuity which shall be actuarial equivalent of his accumulated contributions at the time of his retirement, and

(b) A pension of one-quarter of his average final compensation provided his creditable service is at least thirty-five years, otherwise, a pension of one one-hundred fortieth (1/140) of his average final compensation multiplied by the number of years of his creditable service, and

(c) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to one one-hundred fortieth (1/140) of his average final compensation multiplied by the number of years of service certified to him on his prior service certificate.

(d) The minimum annual retirement allowance for a member who has completed thirty years service and who retired after September 1, 1937, and before June 30, 1949, shall be twelve hundred dollars (\$1,200.00), and the minimum retirement allowance for a member who retired after September 1, 1937, and before June 30, 1949, but whose service is less than thirty years shall receive a minimum retirement allowance based on the proportionate amount of twelve hundred dollars (\$1,200.00) that his service bears to thirty years of service.

(e) The minimum annual retirement allowance for a member who has completed thirty-five years of service and who has attained the age of sixty-five and who retires after June 30, 1949, shall be twelve hundred dollars (\$1,200.00).

(f) In the event a member retired on a superannuation allowance has not received more than three retirement payments prior to death, the beneficiary of the member shall receive a refund of the difference between the total paid and the amount of the accumulated contributions.

(3) to (9). * * * [Same as parent volume.] ✓

History: En. Sec. 6, Ch. 87, L. 1937; amd. Sec. 2, Ch. 137, L. 1945; amd. Sec. 4, Ch. 28, L. 1949; amd. Sec. 4, Ch. 216, L. 1953; amd. Sec. 1, Ch. 160, L. 1955; amd. Sec. 1, Ch. 270, L. 1959; amd. Sec. 1, Ch. 216, L. 1963.

Amendment

The 1963 amendment increased the minimum annual allowances set forth in paragraphs (d) and (e) of subsection (2) from \$900 to \$1,200.

75-2708. Management of moneys. (1) The retirement board shall be the trustees of the moneys collected under this act and the same shall be invested and reinvested by the state board of land commissioners as part of the long term investment fund.

(2) The retirement board annually shall allow regular interest on the average amount for the preceding year on such moneys with the exception of moneys used for administrative expense. The amount so allowed shall be annually credited to such moneys by the retirement board from interest and other earnings on the moneys of the retirement system. Any additional amount required to meet the interest on the moneys of the retirement system shall be paid by the state during the ensuing year and any excess of earning over such amount required shall be deductible from the amounts to be contributed by the state during the ensuing year. Regular interest shall mean such per centum rate to be compounded annually as shall be determined by the retirement board on the basis of the interest earnings of the system for the preceding year and of the probable earnings to be made, in the judgment of the board, during the immediate future.

(3) The state treasurer is the custodian of the moneys collected under this act and of the securities in which said moneys are invested. All payments of such moneys shall be made only upon claims signed by two (2) persons designated by the retirement board. A duly attested copy of a resolution of the retirement board designating such persons and bearing on its face specimen signatures of such person shall be filed with the state controller as his authority for approving such claims.

(4). * * * [Same as parent volume.] ✓

(5) The board may in its discretion transfer the savings account of a member to the pension accumulation moneys if the account has been dormant for a period of ten (10) years provided that no right of the member shall be jeopardized by such transfer and the savings account shall be transferred to the member's name upon subsequent re-entry to membership.

(6) All of the funds referred to in section 75-2709 except the expense fund shall be replaced by one or more accounts in the agency fund. The expense fund shall be replaced by an account in the earmarked revenue fund.

History: En. Sec. 7, Ch. 87, L. 1937; amd. Sec. 3, Ch. 176, L. 1953; amd. Sec. 5, Ch. 216, L. 1953; amd. Sec. 196, Ch. 147, L. 1963.

Amendment

The 1963 amendment, in subsection (1), substituted "moneys collected under" for "several funds created by"; in the first

sentence of subsection (2), substituted "on such moneys with the exception of moneys used for administrative expense" for "in each of the funds with the exception of the expense fund"; deleted "shall be due and payable to said funds and" after "The amount so allowed" in the second sentence of subsection (2); substituted "to such moneys" for "thereto"

in the second sentence of subsection (2); substituted "moneys" for "funds" in the third sentence of subsection (2); substituted "moneys collected under this act" for "several trust funds" and "moneys" for "funds" in the first sentence of subsection (3); substituted "of such moneys" for "from said funds" and "claims" for "vouchers" in the second sentence of subsection (3); substituted "state controller" for "treasurer" and "approving such

claims" for "making payments upon such vouchers" in the third sentence of subsection (3); deleted from subsection (3) a fourth sentence reading, "No voucher shall be drawn unless it has previously been authorized by resolution of the retirement board"; substituted "pension accumulation moneys" for "pension accumulation fund" in subsection (5); made minor changes in phraseology; and added subsection (6).

75-2709. Method of financing. There are hereby created and established an "annuity savings fund" and "annuity reserve fund," a "pension accumulation fund," a "pension reserve fund" and an "expense fund," into which funds all of the assets of the retirement system shall be credited according to the purpose for which they are held as hereinafter prescribed.

(1) and (2). * * * [Same as parent volume.] ✓

(3) Pension accumulation fund. The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and from which pensions and benefits in lieu thereof shall be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund shall be made as follows:

(a) Each and every employer shall pay into the pension accumulation fund an amount equal to three and seventy-five one hundredths per centum (3.75%) of the earnable compensation of each member employed during the whole or such part of the preceding payroll period as such member was so employed by such employer; provided, however, that no payments shall be made into said pension accumulation fund until after July 1, 1945. Provided, further, until such time as the legislative assembly shall provide adequate funds for the establishment of such reserves as are set up in this act, such parts of such act as deal with reserves to be built up by contributions from the state shall be inoperative. Provided, further, that for each payroll period after July 1, 1975, the employers' contribution shall be three and fifty one hundredths per centum (3.50%).

(b) to (q). * * * [Same as parent volume.] ✓

(4) and (5). * * * [Same as parent volume.] ✓

History: En. Sec. 8, Ch. 87, L. 1937; amd. Secs. 2 and 3, Ch. 202, L. 1939; amd. Sec. 3, Ch. 137, L. 1945; amd. Sec. 5, Ch. 28, L. 1949; amd. Sec. 1, Ch. 239, L. 1959; amd. Sec. 2, Ch. 216, L. 1963.

Amendment

The 1963 amendment substituted "July 1, 1975" for "July 1, 1965" in the final proviso to paragraph (3) (a); and made a minor change in punctuation.

CHAPTER 34—TRANSPORTATION OF PUPILS

Section 75-3413. Reimbursements.

75-3414. Budgets and levies for transportation.

75-3413. Reimbursements. (a) Each school district and each county high school meeting the requirements of this act shall be entitled to reimbursement from such moneys as may be appropriated by the legislature for transportation, in an amount not to exceed one third ($\frac{1}{3}$) of the schedule provided for transportation, or services rendered in lieu of transportation,

semiannually on presentation to the state superintendent of public instruction, through the office of the county superintendent of schools, of certified claims for such reimbursement using for such purpose the forms provided by the state superintendent of public instruction. A school bus route which travels through several school districts shall have the county and state reimbursement prorated among the school districts which are served by this bus route by the county transportation committee and that the schedules provided in this act for individual transportation and bus transportation or services in lieu thereof, shall be used instead of any schedule which may have been heretofore or may hereafter be fixed and promulgated by the state board of education. In determining the cost of transportation or services in lieu thereof, no amount shall be included except those which have been paid out by a school district or county high school in the regular manner provided for the payment of other financial obligations for the maintenance of their schools.

(b) and (c). * * * [Same as parent volume.] ✓

History: En. Sec. 13, Ch. 152, L. 1941; amd. Sec. 2, Ch. 189, L. 1943; amd. Sec. 1, Ch. 169, L. 1947; amd. Sec. 3, Ch. 200, L. 1949; amd. Sec. 7, Ch. 189, L. 1951; amd. Sec. 1, Ch. 242, L. 1961; amd. Sec. 61, Ch. 147, L. 1963.

Amendment

The 1963 amendment, in the first sentence of subsection (a), deleted the phrase "in the state public school equalization fund" after "from such moneys."

75-3414. Budgets and levies for transportation. (a) The board of trustees of any school district maintaining an elementary school, or schools, or providing for the transportation of its pupils to attend an elementary school or schools, outside the district, or furnishing services in lieu thereof, shall have the authority and it shall be its duty to provide and adopt a complete transportation budget therefor, which budget shall show in detail and by items the estimated expenditures and receipts for the school year for which it is provided. The estimated expenditures may include a contingency item for the purpose of enabling the trustees of the district to fulfill any obligation to provide transportation in accordance with the provisions of the transportation act for any pupils not residing in the district at the time of adoption of the transportation budget who subsequently become residents of the district during the budget year. The amount of such contingency item shall not exceed ten per cent (10%) of the total amount of the regularly budgeted expenditures of the district arrived at in accordance with the schedule established in section 75-3407, provided, however, that when ten per cent (10%) of the budgeted schedule amount will provide less than one hundred dollars (\$100), the ten per cent (10%) limitation shall not apply and the district may budget for a contingency item of up to but not exceeding one hundred dollars (\$100). The form of such transportation budget shall be prescribed by the state superintendent of public instruction. The total amount of the estimated expenditures, as shown by such transportation budget, shall be shown and included in the elementary school budget form and the estimated receipts from reimbursements, as shown in such transportation budget, shall be shown and included in the elementary budget form as provided. A copy of the elementary transportation budget adopted, together with a duly signed copy of each and every contract form

pertaining thereto shall be transmitted by the county superintendent of schools to the state superintendent of public instruction at the same time copies of the elementary school budgets are required to be so transmitted.

(1) When the total elementary transportation budget has been presented in detail on approved forms including duly signed contract forms for the contracting, operation, maintenance, rent or purchase of school buses, individual transportation, and increased transportation due to isolation, and after deducting all estimated receipts including reimbursements, the balance of the budget shall be paid out of receipts from a tax levied upon all the taxable property of the school district.

(2) The board of trustees of every school district maintaining a high school, or furnishing transportation for its pupils to another high school, or services in lieu thereof, and the board of trustees of every county high school, shall have the authority and it shall be its duty to provide a complete transportation budget therefor, including duly signed contract forms for the contracting, operation, maintenance, rent or purchase of school buses, individual transportation, and increased transportation due to isolation, or any service in lieu of transportation. The budget shall show in detail and by items the estimated expenditures and receipts, including the state transportation reimbursements, for the school year for which it is provided. The estimated expenditures may include a contingency item for the purpose of enabling the trustees of the high school to fulfill any obligation to provide transportation in accordance with the provisions of the transportation act for any high school pupils not residing in the high school territory under the jurisdiction of the trustees at the time of adoption of the transportation budget who subsequently become residents of said territory during the budget years. The amount of such contingency item shall not exceed ten per cent (10%) of the total amount of the regularly budget[ed] expenditures of the high school arrived at in accordance with the schedule established in section 75-3407, provided, however, that when ten per cent (10%) of the budgeted schedule amount will provide less than one hundred dollars (\$100), the ten per cent (10%) limitation shall not apply and the high school may budget for a contingency item of up to but not exceeding one hundred dollars (\$100). The form of such transportation budget shall be prescribed by the state superintendent of public instruction. A copy of the high school transportation budget adopted for each high school, together with a duly signed copy of each and every contract form pertaining thereto, shall be transmitted by the county superintendent of schools to the state superintendent of public instruction at the same time copies of the final high school budgets are required to be so transmitted. For each high school transportation budget arrived at according to the schedule set up in section 75-3407, the amount remaining after deducting all estimated local receipts, and state transportation reimbursements from the total amount required for the transportation budget according to the schedule, shall be the amount required to be raised by tax levy for such high school transportation budget, and the total of all such amounts required to be raised by tax levy for all such high school transportation budgets shall be the total amount required to be raised by

county-wide transportation levy, and the county commissioners, except as hereinafter provided, shall make a county-wide levy of such number of mills as will raise such total amount; provided that this amount shall not be more than two-thirds ($\frac{2}{3}$) of the total of each high school transportation budget according to the schedule as set forth in section 75-3407. The amount remaining in each high school transportation budget over and above the amount arrived at according to the schedules in section 75-3407, as amended, shall be the amount required to be raised by tax levy for each such high school transportation budget and all such amounts required to be raised by tax levy for each such high school transportation budget shall be the total amount required to be raised by high school transportation levy on the high school district if there be one; and in case of a county high school by a county levy, excluding those districts maintaining high schools, otherwise on the common school district, of which each particular high school is a part, and the county commissioners shall make a levy of such number of mills as will raise such needed amount; provided that the amount budgeted for high school transportation in any high school budget shall not be deemed or considered as a part of or included within the maximums for high school budgets as fixed and determined by chapter 199, Laws of 1949, as amended, and the county-wide high school transportation levy herein provided for shall not be deemed or construed as a part of the county-wide high school levy authorized by section 75-4516.1, unless the trustees making such budget so desire and the board of county commissioners find that such high school transportation levy is not required to raise the amount necessary for such budget for all purposes including transportation or services in lieu thereof. Cash balances on hand at the end of the fiscal year shall be used to reduce the district levy for the ensuing year, provided that if there is a cash balance on hand at the end of a fiscal year and no district levy is required for the ensuing fiscal year under the foregoing provisions, then said cash balance shall be used to reduce the amount to be raised by county-wide levy as herein provided.

History: En. Sec. 14, Ch. 152, L. 1941; amd. Sec. 3, Ch. 189, L. 1943; amd. Sec. 8, Ch. 189, L. 1951; amd. Sec. 1, Ch. 126, L. 1961; amd. Sec. 1, Ch. 106, L. 1963.

Amendment

The 1963 amendment added the final sentence to paragraph (2).

CHAPTER 35—FREE TEXTBOOKS

Section 75-3503. Textbooks—license to sell—conditions.

75-3505. Textbooks—special or abridged editions.

75-3503. Textbooks—license to sell—conditions. Before any person, company, or corporation shall offer to any school district any textbook for adoption, sale or exchange, in the state of Montana, said person, company, or corporation shall comply with the following conditions:

First: Such person shall file a copy of such textbook in the office of the state superintendent of public instruction, with a sworn statement of the list price; the lowest wholesale price; and the lowest exchange price that will be given when old books in the same subject and of the like kind and grade, but of a different series, are received in exchange, such

exchange price to be based on a three (3) year adoption period. Such prices are to be quoted FOB Chicago, FOB San Francisco, FOB any other city from which publishers may ship books, and FOB a textbook depository in Montana.

Second: Such persons shall file with the state superintendent of public instruction a written agreement, (1) to furnish said book or books to any school board in the state of Montana at the said lowest price so filed, and to maintain said prices uniformly throughout the state; (2) to reduce such prices automatically in Montana whenever reductions are made elsewhere in the United States; and (3) to guarantee that at no time shall any book so filed by such persons, be sold in Montana at a higher price than is received for such book elsewhere in the United States under similar conditions of transportation and marketing.

Third: Such persons shall file and maintain with the secretary of state a surety bond for not less than two thousand dollars (\$2,000.00) and not more than ten thousand dollars (\$10,000.00), such bond to be in an amount to be fixed by the state superintendent of public instruction and to run to the state of Montana, to be conditioned on the faithful performance of all things on the part of such persons to be performed under this act and such bond to be approved by the attorney general. Upon compliance with the foregoing conditions the state superintendent of public instruction shall issue a license to any such person to sell such textbooks to school districts in the state of Montana.

Fourth: License fees. The person receiving such license shall pay a fee of one dollar (\$1.00) for each book listed; provided that in the case of several books presented by one publisher in the same subject under the same series head for any one grade, the maximum filing fee in such case shall not exceed three dollars (\$3.00). Such moneys received through payment of said filing fees shall be deposited in the state treasury to the credit of the general fund.

History: En. Sec. 2, Ch. 138, L. 1941;
amd. Sec. 63, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "deposited in the state treasury to the credit of the general fund" at the end of the

section for "used to defray all expenses incurred under the provisions of this act. Provided that any surplus which might exist at the end of any biennium shall be transferred to the state public school general fund."

75-3505. Textbooks—special or abridged editions. Whenever the publisher shall prepare an abridged or special edition of any of his books listed with the state superintendent of public instruction and shall supply such special edition elsewhere at a lower wholesale price than the wholesale price for the edition filed with the state superintendent of public instruction, the publisher must agree to furnish such special edition at the wholesale price at which it is furnished elsewhere, so long as it is supplied at the said lower price anywhere outside of Montana; and it shall be understood that the bond given by the publisher shall cover this provision as to special editions. In case an action is brought on such bond, the state, if successful, shall recover the full amount of the bond, which amount shall be paid into the state general fund.

History: En. Sec. 4, Ch. 138, L. 1941;
amd. Sec. 64, Ch. 147, L. 1963.

Amendment
The 1963 amendment substituted "state general fund" for "state public school general fund" at the end of the section.

CHAPTER 36—UNIFORM SYSTEM OF FREE PUBLIC SCHOOLS—STATE SUPPORT—SCHEDULE OF CONTRIBUTIONS

- Section 75-3611. Definitions—schedules of financial program.
75-3612. Foundation program.
75-3612.1. Increase in foundation program in anticipation of unusual increase in enrollment—formulas for computation.
75-3612.2. Minimum increase required for application of act.
75-3612.3. Provisions supplemental.
75-3613. State equalization aid to public schools—enumeration of sources—definition.
75-3614. State board of education to administer state public school equalization aid.
75-3615. State superintendent of public instruction to compile data and make reports concerning state equalization aid.
75-3616. Distribution of funds—reports required.
75-3617. Application for approval as isolated schools—circumstances to be considered in acting upon application.
75-3618. Distribution of money available to districts—formula for apportionment of county funds.
75-3619. Formula for distribution of state funds.
75-3620. State superintendent to give notice if state funds inadequate.
75-3621. Resolution to issue warrants—hearing.

75-3611. Definitions—schedules of financial program. The term "average number belonging" or "ANB" shall mean the average number of regularly enrolled, full-time pupils attending a public school, or attending public schools in a school district as a whole, which average number shall be computed by dividing the sum of the aggregate days of attendance by regularly enrolled pupils and the aggregate days of absence by regularly enrolled pupils during the last completed school year, by the number one hundred eighty (180); provided that attendance for a part of a morning session or part of an afternoon session shall be counted as one-half ($\frac{1}{2}$) day's attendance in either case, and provided further, when any regularly enrolled pupil has been absent, with or without excuse, for more than three (3) consecutive school days in such school year, his absence after the third day and until his return to school shall not be included in the aggregate days of absence. The average number belonging of secondary pupils of a school district or of elementary pupils of a school district does not include the pupils of any high school or of any elementary school which has not been accredited by the state board of education. Pupils of a junior high school which has been duly approved and accredited as such by the state board of education are to be deemed secondary school pupils for the purpose of computing average number belonging of the district in which the junior high school is situated.

Any school district may reopen a school which was not in operation the previous year, which such reopening is approved by the county budget board and the state superintendent of public instruction, and when the county superintendent estimates the probable enrollment for such school to be at least five (5), and the parents of at least three (3) of these five (5) children petition for such reopening; such approved reopened school shall

be eligible for county and state aid on its foundation program. Any school district which opens a new school shall comply with at least the minimum requirements for reopening a closed school as herein provided, and no foundation program shall be established for any new school not meeting the minimum requirements for opening.

Should a school district anticipate an increase in ANB, above the normal state-wide increase of the past year, due to the closing of any private or public school in the district or in neighboring districts, such district shall be allowed an increase in ANB for budget purposes, based on an estimate arrived at by the district superintendent, board and county superintendent and approved by the state superintendent.

The terms, "minimum foundation program" and "foundation program," shall mean the amount required to operate and maintain an adequate and efficient school, as fixed and established by the schedules of minimum operating revenues set forth in section 75-3612.

The term "isolated school," shall mean an elementary school having an ANB of nine (9) or less pupils, the maintenance and operation of which as an isolated school has been approved in the manner hereinafter provided in section 75-3617; and the term, "isolated high school," shall mean a high school having an ANB of twenty-four (24) or less pupils, the maintenance and operation of which as an isolated school has been approved in the manner hereinafter provided in section 75-3617.

The term, "nonisolated school," shall mean an elementary school having an ANB of less than ten (10) pupils, which has not been approved as an isolated school; and the term, "nonisolated high school," shall mean a high school having an ANB of twenty-four (24) or less pupils, which has not been approved as an isolated high school.

History: En. Sec. 2, Ch. 199, L. 1949; amd. Sec. 1, Ch. 107, L. 1951; amd. Sec. 1, Ch. 207, L. 1953; amd. Sec. 1, Ch. 104, L. 1961; amd. Sec. 4, Ch. 267, L. 1963.

Amendment

The 1963 amendment increased the maximum size of isolated elementary schools, as defined in the next to last

paragraph, from eight to nine pupils; increased the size of nonisolated elementary schools, as defined in the last paragraph, from less than nine to less than ten pupils; and increased the size of nonisolated high schools, as defined in the last paragraph, from less than 20 to less than 24 pupils.

75-3612. Foundation program. The moneys available for state equalization aid shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt retirement, and for the payment of any and all costs and expense incurred in connection with any adult education program, kindergarten, recreation program, school lunch and cafeteria program, new buildings, new grounds, and transportation, in accordance with the following schedules:

Elementary Schools

The foundation program shall be seventy-five per cent (75%) of the maximum budget as set forth in section 75-1713.1, R.C.M. 1947.

High Schools

The foundation program shall be seventy-five per cent (75%) of the maximum budget as set forth in section 75-4518.1, R.C.M. 1947.

History: En. Sec. 3, Ch. 199, L. 1949; amd. Sec. 1, Ch. 244, L. 1953; amd. Sec. 1, Ch. 241, L. 1955; amd. Sec. 1, Ch. 251, L. 1957; amd. Sec. 1, Ch. 267, L. 1959; amd. Sec. 1, Ch. 230, L. 1961; amd. Sec. 52, Ch. 147, L. 1963; amd. Sec. 5, Ch. 267, L. 1963.

Amendments

Chapter 147, Laws 1963, substituted

"available for state equalization aid" for "coming into said state public school equalization fund" after "The moneys" at the beginning of the section.

Chapter 267, Laws 1963, incorporated the change made by Ch. 147 and completely rewrote the material under the headings "Elementary Schools" and "High Schools." For previous text, see parent volume.

75-3612.1. Increase in foundation program in anticipation of unusual increase in enrollment—formulas for computation. A school district or county high school which anticipates an unusual increase in enrollment in the ensuing year may increase its foundation program for the ensuing year in accordance with the following provisions:

(1) For the school district or county high school, the average number belonging approved for foundation program purposes for the current year and each of the immediately preceding three (3) years shall be used to compute the annual percentage increase in average number belonging of each of the years over the immediately preceding year. The three (3) increases shall be averaged to obtain the average annual percentage increase in average number belonging.

(2) On or about May 1 of the current year, the estimated average number belonging for the entire current school year shall be computed, based on pupil attendance and absence records through April 30, increased by the ratio that the total number of school days in the current term bears to the number of school days completed through April 30.

(3) On or about May 1, the board of trustees shall estimate the probable average number belonging to be attained in the ensuing school year, based on such factual information as may be available to the board. The board of trustees shall submit such estimated average number belonging to the county board of school budget supervisors on or before May 10, for approval of the estimate as the probable average number belonging to be attained during the ensuing year. The estimate shall be accompanied by such data as the county board of budget supervisors may require. The county board of budget supervisors shall act to approve or disapprove the estimated average number belonging on or before May 25, and may adjust any estimate submitted. The county board of budget supervisors shall immediately notify the superintendent of public instruction of the action taken by the board, together with such facts and information as the superintendent of public instruction may deem necessary. The superintendent of public instruction shall approve, disapprove, or adjust the estimate and so notify the board of trustees.

(4) The percentage increase of the average number belonging estimated for the ensuing year approved as in (3) above, over the estimated average number belonging for the current year computed as in (2) above, shall be computed.

(5) Whenever the increase computed in (4) above is at least twice the average annual increase computed in (1) above, the school district or county high school, for the purpose of determining the amount of its foundation program for the ensuing year, may increase the actual average

number belonging for the current year by a number to be computed as follows:

(a) Apply the average annual percentage increase as computed in (1) above to the actual average number belonging of the current year to determine the usual average number belonging which would be attained in the ensuing year under normal conditions;

(b) Deduct from the estimated average number belonging for the ensuing year approved as in (3) above, the usual average number belonging for the ensuing year as determined in (a) above. The difference shall be the maximum additional average number belonging which may be added to the actual average number belonging for the purpose of establishing the ensuing year's foundation program.

History: En. Sec. 1, Ch. 265, L. 1963.

Title of Act

An act providing for the allowance of an increase in average number belonging for budget purposes where a school dis-

trict or county high school anticipates an unusual increase in enrollment in the ensuing year; and providing the procedure for determining the average number belonging.

75-3612.2. Minimum increase required for application of act. The provisions of this act shall not apply to any district or high school in which the average annual percentage increase in average number belonging as computed in subsection (1) of section 1 [75-3612.1(1)] is less than three per cent (3%).

History: En. Sec. 2, Ch. 265, L. 1963.

75-3612.3. Provisions supplemental. The provisions of this act shall be in addition to, and not a limitation upon, the provisions of section 75-3611 with respect to anticipated increases in average number belonging.

History: En. Sec. 3, Ch. 265, L. 1963.

75-3613. State equalization aid to public schools—enumeration of sources—definition. There shall be paid into the earmarked revenue fund, for state equalization aid to the public schools of the state, the present allocation equal to twenty-five per cent (25%) of all moneys received from the collection of income taxes under sections 84-4901 to 84-4935; and twenty-five per cent (25%) of all moneys received from the collection of corporation license taxes under sections 84-1501 to 84-1519, as provided in section 84-1901; and one-half ($\frac{1}{2}$) of the funds received from the treasurer of the United States as the state's share of oil and gas royalties under the act of Congress of February 25, 1920. The term "state equalization aid" as used in the code includes moneys coming to the state from the sources referred to above, plus any legislative appropriation of moneys from other sources for distribution to the public schools.

History: En. Sec. 5, Ch. 199, L. 1949; amd. Sec. 53, Ch. 147, L. 1963.

Amendment

The 1963 amendment substantially rewrote this section. For previous text, see parent volume.

75-3614. State board of education to administer state public school equalization aid. The state board of education shall administer and distribute state equalization aid in the manner and with the powers and duties provided in this act. Said board shall have the power to require

such reports from the county superintendent of schools, county budget boards, county treasurers and school trustees as it may deem necessary, and shall provide rules and regulations for the purpose of carrying out the provisions of this act.

History: En. Sec. 6, Ch. 199, L. 1949; amd. Sec. 54, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "shall administer and distribute state equaliza-

tion aid" in the first sentence for "is hereby declared to be the public school equalization board to administer and distribute said public school equalization fund."

75-3615. State superintendent of public instruction to compile data and make reports concerning state equalization aid. The state superintendent of public instruction shall keep in his office full and complete data concerning moneys available for state equalization aid and, in addition thereto, after July 1, 1949, the requirements of the various school districts of the state for aid from said funds to maintain the foundation financial program herein provided. The state superintendent of public instruction shall report to the state board of education at its meetings to be held in the months of July and December in each year the estimated amount which will be available for state equalization aid for the succeeding six months period, commencing January 1, and July 1. In any year when a session of the state legislative assembly convenes, the state superintendent of public instruction shall report to both branches of the assembly all figures and data available in his office concerning disbursements of state equalization aid during the preceding two years, the amount then available for state equalization aid, and apportionment made of the moneys available for state equalization aid but not yet paid out, and the latest estimate of accruals of moneys available for state equalization aid.

History: En. Sec. 7, Ch. 199, L. 1949; amd. Sec. 55, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "moneys available for state equalization aid" in the first sentence for "accruals and credits to the state public school equalization fund"; substituted "available for state equalization aid" near the end of the second sentence for "in the state public

school equalization fund"; substituted "disbursements of state equalization aid" in the third sentence for "disbursements from said fund"; substituted "available for state equalization aid" in the third sentence for "standing to the credit of said fund" and for "of said fund"; and substituted "of moneys available for state equalization aid" at the end of the section for "to said fund."

75-3616. Distribution of funds—reports required. After July 1, 1949, the state board of education shall, in the months of December and April of each year, order disbursements of state equalization aid within the limitations hereinafter specified and upon the basis of reports made to the state superintendent of public instruction, to any county treasurer who controls the fund of any school district or joint school district which, as established by its budget duly approved for the current school year, will not have sufficient funds to maintain the foundation financial program after receipt by it (or) its apportioned share of interest and income moneys, if any, and from the basic county levies provided for by section 75-3706 and section 75-4516.1.

Each order of the state board of education for disbursements of state equalization aid, shall be certified to the state auditor and state treasurer,

whereupon the state auditor shall draw his warrants in accordance with such order and the state treasurer shall pay the same to the several county treasurers for credit to the school districts as provided in such order.

History: En. Sec. 8, Ch. 199, L. 1949; amd. Sec. 1, Ch. 60, L. 1961; amd. Sec. 56, Ch. 147, L. 1963; amd. Sec. 6, Ch. 267, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 147 and once by Ch. 267. Chapter 267 incorporated some but not all of the changes made by Ch. 147. Since the two amendments do not appear to conflict, the compiler has made a composite section incorporating both amendments.

Amendments

Chapter 147, Laws 1963, substituted "of state equalization aid" for "from the state public school equalization fund" after "disbursements" near the beginning of the section; substituted "apportioned share of interest and income moneys" in the first paragraph for "apportioned share from the permanent school fund of the state, from other constitutional sources"; substituted "amount of state equalization aid apportioned to any school district" in the former proviso to the first paragraph for "amount apportioned to any school district from said state public school equalization fund"; substituted "amount of interest and income moneys apportioned to such school district" in the former proviso to the first paragraph for "amount apportioned to such school district from

the permanent school fund"; deleted "acting as the public school equalization board" which followed "state board of education" near the beginning of the second paragraph; and substituted "state equalization aid" for "funds from the state public school equalization fund" after "disbursements of" in the second paragraph.

Chapter 267, Laws 1963, incorporated the first change made by Ch. 147, Laws 1963; substituted "and from the basic county levies provided for by section 75-3706 and section 75-4516.1" at the end of the first paragraph for "from the district levy of five mills for the foundation program provided for by section 75-1723, the county levies provided for by this act, and from all other regular sources of revenue required to be used to finance the foundation program as provided in sections 75-1723 and 75-4516.1"; deleted from the end of the first paragraph a proviso which (after amendment by Ch. 147, Laws 1963) read: "provided, however, that the amount of state equalization aid apportioned to any school district, when added to the amount of interest and income moneys apportioned to such school district, shall not exceed fifty per cent (50%) of the total foundation program of such district, computed at the rates and amounts set forth in section 75-3612"; and incorporated the changes made in the second paragraph by Ch. 147, Laws 1963.

75-3617. Application for approval as isolated schools—circumstances to be considered in acting upon application. Before any elementary school having an ANB of nine (9) or less may be approved as an isolated school, and before any high school having an ANB of twenty-four (24) or less may be approved as an isolated high school, the board of trustees of the district wherein said school is located shall, on or before the first day of May in each year, make written application to the budget board for such approval. Such application shall be acted upon on or before the fifteenth day of June, and such application shall be granted if transportation of the pupils of such school to another school is impractical by reason of the existence of obstacles to travel, such as mountains, rivers, poor roads, distance of pupils' homes from county roads or highways, or the distance of such isolated school from the nearest open school having room and facilities for the pupils of such isolated school or other conditions resulting in unusual hardship to the pupils, such school shall be approved as an isolated school upon a finding and determination by said budget board, approved by the county superintendent of schools and by the state board of education, and if none of the above-mentioned circumstances exist, such application shall be denied.

History: En. Sec. 16, Ch. 199, L. 1949; amd. Sec. 2, Ch. 230, L. 1961; amd. Sec. 7, Ch. 267, L. 1963.

Amendment

The 1963 amendment substituted "nine (9)" for "eight (8)" near the beginning of the section in the phrase pertaining to elementary schools; deleted "said budget board shall find and determine that" before "transportation of the pupils" near the beginning of the second sentence; and substituted "or other conditions resulting in unusual hardship to the pupils, such school shall be approved as an isolated

school upon a finding and determination by said budget board, approved by the county superintendent of schools and by the state board of education" near the end of the section for "and an elementary school may also be approved as an isolated school upon a finding and determination by said budget board, approved by the county superintendent of schools and by the state superintendent of public instruction of the existence of conditions other than obstacles to travel which would result in unusual hardship to the pupils of such isolated school if they were transported to another school."

75-3618. Distribution of money available to districts—formula for apportionment of county funds. After the deduction of transportation reimbursements provided by law, the proceeds of the basic county twenty-five (25) mill common school levy as provided for in section 75-3706 and the proceeds of the basic special tax for high schools, as provided for in section 75-4516.1 shall each be separately distributed by the county superintendent to the respective districts in the county, and the county high school if there be one, in proportion to their needs under the foundation financial program. In all cases in which the proceeds of such basic county levy when added to interest and income moneys available to the respective districts, and other funds which must be used in support of the foundation financial program are insufficient to finance the foundation financial program, the proceeds of the basic county common school levy and the proceeds of the basic county special tax for high schools shall each be separately distributed in accordance with the following procedure; provided, however, that cash balances to the credit of the district at the end of the school year, after authorized reserves have been subtracted as well as outstanding warrants, shall be used by the district to reduce the levies on the district for the general fund after county and state equalization aid have been received:

1. Determine the ratio that the total funds available to all districts in the county in support of the foundation program (including proceeds of the basic county levy) bears to the total costs of the foundation program for all such districts.
2. Determine the ratio that the total funds available to each district in support of the foundation program (excluding all proceeds of the basic county levy) bears to the cost of the foundation program of each such district.
3. Districts in which the ratio as determined in (2) above exceeds the ratio in (1) above shall not be entitled to distribution of such county funds but shall be excluded from further consideration under this section.
4. After elimination of districts referred to in (3) above, determine the ratio that the total funds available to all remaining districts in the county in support of the foundation program (including proceeds of the basic county levy) bears to the total cost of the foundation program of all such remaining districts. Each remaining district shall then be entitled to distribution of funds from the basic county levy, which, when added to

all other funds available to such district in support of the foundation program shall be sufficient to finance such proportionate part of its foundation program.

5. No district school shall be deprived of its needful share of either county levy by reason of it being nonaccredited.

6. No territory situated within the county shall be excluded from the distribution of the school funds of the county solely because such territory lies within the boundaries of a joint district.

History: En. Sec. 17, Ch. 199, L. 1949; amd. Sec. 1, Ch. 182, L. 1951; amd. Sec. 1, Ch. 272, L. 1955; amd. Sec. 4, Ch. 151, L. 1961; amd. Sec. 57, Ch. 147, L. 1963; amd. Sec. 8, Ch. 267, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 147 and once by Ch. 267. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments.

Amendments

Chapter 147, Laws 1963, substituted "interest and income moneys available to the respective districts" in the second sentence of the first paragraph for "all other funds available to the respective districts from the permanent school fund."

Chapter 267, Laws 1963, substituted "the proceeds of the basic county twenty-

five (25) mill common school levy as provided for in section 75-3706 and the proceeds of the basic special tax for high schools, as provided for in section 75-4516.1" near the beginning of the section for "the proceeds of the county ten (10) mill common school levy and the proceeds of the county ten (10) mill special tax for high schools"; inserted "basic" before "county levy" near the beginning of the second sentence, before "county common school levy" and before "county special tax" later in the second sentence, and before "county levy" in each of paragraphs 1 and 2 and two places in paragraph 4; deleted "and the five (5) mill tax for elementary schools provided for in section 75-1723" after "county levy" near the beginning of the second sentence; deleted "the uniform district levy and" before "county and state equalization aid" near the end of the preliminary paragraph; and inserted "such" before "county funds" in paragraph 3.

75-3619. Formula for distribution of state funds. At any time when the total requirements of the several counties of the state for state equalization aid in support of the elementary school and high school foundation financial programs of the school districts within said counties shall exceed the funds available, the funds on hand shall, subject to the limitation hereinafter specified, be apportioned and paid out to the several county treasurers in accordance with the following procedure:

Provided that seventy per cent (70%) of state equalization aid shall be set aside for the common schools and thirty per cent (30%) of state equalization aid shall be set aside for high schools, and provided further that such allocation shall not prevent a transfer of funds if revenues for the common schools shall be in excess of the foundation program requirement for common schools.

(1) Determine the ratio that the total funds available to all counties in the state in support of the foundation financial program (including the funds available for state equalization aid) bears to the total cost of the foundation financial program in all counties.

(2) Determine the ratio that the total funds available to each county in support of the foundation financial program (excluding any payment for state equalization aid) bears to the cost of the foundation financial program of all school districts of the county.

(3) Counties in which the ratio, as determined in (2) above, exceeds the ratio in (1) above, shall not be entitled to distribution of state equalization funds but shall be excluded from further consideration under this section.

(4) After elimination of counties referred to in (3) above, determine the ratio that the total funds available to all remaining counties in support of the foundation financial program (including the total amount available for state equalization aid), bears to the total cost of the foundation financial program of all such remaining counties. Each remaining county shall then be entitled to distribution of funds for state equalization aid, which, when added to all other funds available to such county in support of the foundation financial program, shall be sufficient to finance such proportionate part of the total foundation financial program of all school districts in the county.

The county superintendent of schools shall distribute the funds received by such county from the state for state equalization aid to the respective elementary districts and high schools in proportion to the needs of each respective elementary district and high school under the foundation financial program, such distribution to be made by applying to the receipts from the state for state equalization aid the formula provided in section 75-3618 for the distribution of the proceeds of basic county levies.

History: En. Sec. 18, Ch. 199, L. 1949; amd. Sec. 58, Ch. 147, L. 1963; amd. Sec. 9, Ch. 267, L. 1963.

Amendments

Chapter 147, Laws 1963, substituted "state equalization aid" near the beginning of the section for "payment from the state public school equalization fund"; deleted "in said equalization fund" after "funds available" in the preliminary paragraph; substituted "for state equalization aid" for "in the equalization fund," "from the equalization fund," or "from the public school equalization fund" in paragraphs (1) and (2), twice in paragraph (4), and twice in the final paragraph; and substituted "of state equalization aid apportioned to any school district, when added to the amount of interest and income moneys apportioned to such school dis-

trict" in the former proviso to paragraph (4) for "apportioned to any school district from said state public school equalization fund, when added to the amount apportioned to such school district from the permanent school fund, shall."

Chapter 267, Laws 1963, incorporated the changes made by Ch. 147, Laws 1963; inserted the proviso constituting the proviso before the numbered paragraphs; deleted from the end of paragraph (4) a proviso which (after amendment by Ch. 147, Laws 1963) read, "provided, however, that the amount of state equalization aid apportioned to any school district, when added to the amount of interest and income moneys apportioned to such school district not exceed fifty per cent (50%) of the total foundation program of such district"; and inserted "basic" before "county levies" at the end of the section.

75-3620. State superintendent to give notice if state funds inadequate. On or before June 1, 1949, if the requirements of the several school districts of the state for state equalization aid shall exceed the moneys available, as soon as such facts shall have been ascertained, the state superintendent of public instruction shall certify to each county superintendent of schools the amount which will be available for state equalization aid for the school districts of his county, and the estimated deficiency of funds for state aid in support of these foundation financial programs and transportation budgets. The county superintendent, upon receipt of such certificate shall notify each school district clerk in his county of the information contained therein.

History: En. Sec. 19, Ch. 199, L. 1949; amd. Sec. 59, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "for state equalization aid" in two places in the

first sentence for "for aid from the state public school equalization fund" and for "from said equalization fund"; and deleted "to said fund" after "exceed the moneys available" in the first sentence.

75-3621. Resolution to issue warrants—hearing. After July 1, 1949, the boards of trustees of any school district which will have insufficient funds to meet its approved budget for operating expense; including transportation expense, because of a deficiency in state equalization aid, may, by majority vote, adopt a resolution authorizing the issuance of warrants in excess of funds on hand for payment of budgeted expenses which shall not exceed, in the aggregate, the deficiency in payments of state equalization aid.

Such resolutions must be adopted at a regular or special meeting of the board, and notice of the time and place of such meeting and the text of the proposed resolution shall be given ten (10) days prior to the meeting by posting copies of such notice at three (3) public places in the district and by one (1) publication of such notice in a newspaper generally circulated in the district not less than ten (10) days prior to said meeting.

Any taxpayer on property within the district, and any parent or guardian of a school child residing in the district, may attend such meeting and be heard in support of or in opposition to such resolution. The deficiency of state equalization aid, evidenced by the certificate of the state superintendent, as provided for in section 75-3620 shall be sufficient cause for adoption of the resolution.

History: En. Sec. 20, Ch. 199, L. 1949; amd. Sec. 60, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "in state equalization aid" or "of state equalization aid" for "in the state public school

equalization fund" after "deficiency" in the first paragraph, for "from said state fund" at the end of the first paragraph, and for "of the state public school equalization fund" in the second sentence in the third paragraph.

CHAPTER 37—FINANCE

- Section 75-3701. Public school fund.
 75-3706. Common school levy.
 75-3722. Duties of county treasurer.

75-3701. (1201) Public school fund. The principal of the public school fund shall be carried by the state treasurer as a subfund in the trust and legacy fund and shall remain irreducible and permanent. That said fund shall be derived from the following sources, to wit: Appropriations and donations by the state; donations and bequests by individuals to the state or common schools; the proceeds of land and other property which revert to the state by escheat and forfeiture; the proceeds of all property granted to the state, when the purpose of the grant is not specified or is uncertain; funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law; the proceeds of the sale of timber, stone, materials, or other property from school lands other than those granted for specific purposes, and all moneys other than rental recovered from persons trespassing on said

lands; five per centum (5%) of the proceeds of the sale of public lands lying within the state which shall be sold by the United States subsequent to the admission of the state into the Union as approved by section 15 of the Enabling Act; the principal of all funds arising from the sale of lands and other property which have been and may be hereafter granted to the state for the support of common schools, and such other funds as may be provided by the legislative enactment.

History: Ap. p. Sec. 1940, Pol. C. 1895; amd. Sec. 11, p. 133, L. 1897; re-en. Sec. 993, Rev. C. 1907; re-en. Sec. 2000, Ch. 76, L. 1913; re-en. Sec. 1201, R. C. M. 1921; amd. Sec. 223, Ch. 147, L. 1963.

Amendment

The 1963 amendment rewrote the first sentence, which previously read: "The principal of the state school fund shall remain irreducible and permanent."

75-3706. (1202) Common school levy. In addition to the provisions for the support of the common schools, hereinbefore provided, it shall be the duty of the county commissioners of each county in the state to levy an annual basic tax of twenty-five (25) mills on the dollar of the taxable value of all taxable property within the county, which levy shall be made at the time and in the manner provided by law for the levying of taxes for county purposes, which tax shall be collected by the county treasurer at the same time and in the same manner as state and county taxes are collected; provided that if a basic levy of less than twenty-five (25) mills should be sufficient to meet the total of the approved budgets of all school districts within the county, then such lesser basic levy shall be made, but no school district within a county levying less than the basic twenty-five (25) mills shall receive any apportionment from the state public school equalization fund; it shall be the duty of the board of county commissioners to levy, if necessary, an additional tax in such number of mills on the taxable value of all taxable property within each school district as shall be required to provide the foundation program for such school district.

For the further support of the common schools, there shall also be set apart by the county treasurer all moneys paid into the county treasury arising from all fines for violations of law, unless otherwise specified by law. Such moneys shall be forthwith paid into the county treasury by the officer receiving the same, and be added to the yearly school fund raised by taxation.

History: Ap. p. Sec. 44, p. 630, Cod. Stat. 1871; re-en. Sec. 43, p. 132, L. 1874; re-en. Sec. 1130, 5th Div. Rev. Stat. 1879; re-en. Sec. 1902, 5th Div. Comp. Stat. 1887; amd. Sec. 1940, Pol. C. 1895; amd. Sec. 1940a, p. 134, L. 1897; amd. Sec. 1, p. 12, L. 1901; amd. Sec. 1, Ch. 51, L. 1907; re-en. Sec. 994, Rev. C. 1907; amd. Sec. 2001, Ch. 76, L. 1913; amd. Sec. 31, Ch. 196, L. 1919; re-en. Sec. 1202, R. C. M. 1921; amd. Sec. 1, Ch. 123, L. 1929; amd. Sec. 1, Ch. 273, L. 1947; amd. Sec. 11, Ch. 199, L. 1949; amd. Sec. 10, Ch. 267, L. 1963.

Amendment

The 1963 amendment inserted "basic" before "tax" or "levy" in three places; increased the specified levy from ten to twenty-five mills; made minor changes in phraseology; and added to the first paragraph the words "it shall be the duty of the board of county commissioners to levy, if necessary, an additional tax in such number of mills on the taxable value of all taxable property within each school district as shall be required to provide the foundation program for such school district."

75-3722. (1213) Duties of county treasurer. It shall be the duty of the county treasurer of each county:

1. To receive and hold all school moneys and to keep a separate account of their disbursements to the several school districts which shall be entitled to receive them according to the apportionment of the county superintendent. A separate account shall be maintained for each fund supported by a county-wide levy for a specific, authorized purpose, including (1) the basic county mill levy for elementary schools as provided in section 75-3706, (2) the basic special tax for high schools as provided in section 75-4516.1, (3) the county levy for high school transportation as provided in section 75-3414, (4) the county levy for the high school retirement systems as provided in sections 68-603 and 75-2709, and such other county levy as may be required.

2 to 8. * * * [Same as parent volume.]

History: Ap. p. Sec. 1880, Pol. C. 1895; re-en. Sec. 941, Rev. C. 1907; amd. Sec. 2010, Ch. 76, L. 1913; re-en. Sec. 1213, R. C. M. 1921; amd. Sec. 1, Ch. 144, L. 1929; amd. Sec. 1, Ch. 62, L. 1961; amd. Sec. 11, Ch. 267, L. 1963.

(1) and (2) in the second sentence of paragraph 1 for clauses reading, "(1) the county ten-mill levy for elementary schools, (2) the county ten-mill levy for high schools"; and added the words "and such other county levy as may be required" at the end of paragraph 1.

Amendment

The 1963 amendment substituted clauses

CHAPTER 38—EXTRA TAXATION FOR SCHOOL PURPOSES

Section 75-3801. District school taxes—election.

75-3801. (1219) District school taxes—election. (1) Whenever the board of trustees of any school district shall deem it necessary to raise money by taxation in excess of the levy required to meet its maximum budgets as specified in section 75-1713.1, for the purpose of maintaining the schools of said district, or building, altering, repairing or enlarging any schoolhouse or houses of such district, for furnishing additional school facilities for said district, or for any other purpose necessary for the proper operation and maintenance of the schools of said district, said board of trustees shall determine and fix the amount necessary and required for such purpose or purposes in addition to the maximum budgets hereinbefore provided for, and it shall submit the question of an additional levy to raise said excess amount to the qualified electors residing within the district who are taxpayers and whose names appear upon the last completed assessment roll of the county for state, county and school taxes, either at the regular annual election held in said district, or at a special election called for that purpose by the board of trustees of said district. Such election shall be called by resolution in the same manner as provided for other school elections, and shall be held prior to August first.

(2) Whenever the board of trustees of any district or county high school shall deem it necessary to raise money by taxation in excess of the levy required to meet its maximum budgets as specified in section 75-4518.1 for the purpose of maintaining the high schools of said district or the county high school, or building, altering, repairing or enlarging any schoolhouse or houses of such district or county high school, for furnishing additional school facilities for said district, or county high school, or for any other purpose necessary for the proper operation and

maintenance of the schools of said district, or county high school, said board of trustees shall determine and fix the amount necessary and required for such purpose or purposes in addition to any other legal levies on the district, including the approved addition to its foundation program hereinbefore provided for, and in the case of the district high school it shall submit the question of an additional levy to raise said amount to the qualified electors residing within the district who are taxpayers and whose names appear upon the last completed assessment roll of the county for state, county and school taxes, either at the regular annual election held in said district or at a special election called for that purpose by the board of trustees of said district. In the case of the county high school the board shall submit the question of an additional levy to raise said amount to the qualified electors residing within the county, exclusive of those residing within any district maintaining a district high school in the county, who are taxpayers and whose names appear upon the last completed assessment roll of the county for state, county and school taxes, either at the regular annual elections held in said districts, or special elections called for that purpose by the board of trustees of said county high school. Such election shall be called by resolution in the same manner as provided for other school elections, and shall be held prior to August first; and provided, further, that the provisions of this act shall not prevent the voting of a special levy on a high school district as provided for in chapter 130, Laws of 1949 (75-4609).

History: En. Sec. 1, Ch. 93, L. 1917; re-en. Sec. 1219, R. C. M. 1921; amd. Sec. 1, Ch. 120, L. 1925; amd. Sec. 1, Ch. 144, L. 1935; amd. Sec. 12, Ch. 199, L. 1949; amd. Sec. 1, Ch. 210, L. 1951; amd. Sec. 2, Ch. 247, L. 1953; amd. Sec. 12, Ch. 267, L. 1963.

Amendment

The 1963 amendment substituted "its maximum budgets as specified in section 75-1713.1" near the beginning of subsection (1) for "its foundation program and

approved additions thereto within the limitations of thirty per cent (30%) hereinbefore specified"; substituted "in addition to the maximum budgets" later in subsection (1) for "in addition to the five (5) mill levy and the approved addition to its foundation program"; and substituted "its maximum budgets as specified in section 75-4518.1" near the beginning of subsection (2) for "its foundation program and approved additions thereto within the limitation hereinbefore specified."

CHAPTER 41—HIGH SCHOOLS—COUNTY—JUNIOR AND DISTRICT—JOINT SCHOOL SYSTEMS

- Section 75-4120. Authority to abolish or to unify.
 75-4121. Petition to be filed.
 75-4122. Commissioners to submit question.
 75-4123. Publication of notice and preparation of poll books.
 75-4124. Further notice required—manner of holding election—ballots.
 75-4125. Action by board of county commissioners when election favors abolishing or unifying county high school.
 75-4126. When election favors retaining high school.
 75-4127. Disposition of unexpended funds of county high school after abolishment or unification.
 75-4128. Disposition of property of county high school when abolished or unified—inventory—appraisal—compensation of appraisers.
 75-4130. Board of county commissioners to sell—manner of sale—execution of deeds.
 75-4133. Disposition of taxes levied for county high school but unpaid before abolishment or unification.

75-4134. Liquidation of bonded indebtedness of county high school upon abolishment or unification.

75-4138. School districts may establish high schools and county high schools a branch—transportation.

75-4139. Approval of superintendent of public instruction—how secured.

75-4146. Expenditure of money for transportation of high school pupils.

75-4120. (1262.19) Authority to abolish or to unify. Any county in which a county high school has been established may abolish such county high school or unify it with and make it a part of the public school system of the school district in which it is located and dispose of all property belonging thereto in the manner provided in this chapter.

History: En. Sec. 19, Ch. 148, L. 1931; it with and make it a part of the public
amd. Sec. 1, Ch. 261, L. 1963. school system of the school district in which it is located."

Amendment

The 1963 amendment inserted "or unify

75-4121. (1262.20) Petition to be filed. Between the first day of July and the first day of September in any year in which a general election is held in the state of Montana twenty per centum (20%) or more, of the qualified registered electors of any county maintaining a county high school who are also assessed in their own names on the assessment books of the county for that year upon real or personal property may file their written petition with the county clerk of the county praying that the county high school be abolished or praying that the county high school be unified with and made a part of the public school system of the school district in which said county high school is located.

History: En. Sec. 20, Ch. 148, L. 1931; and added "or praying that the county
amd. Sec. 2, Ch. 261, L. 1963. high school be unified with and made a part of the public school system of the school district in which said county high school is located" at the end of the section.

Amendment

The 1963 amendment inserted "registered" between "qualified" and "electors";

75-4122. (1262.21) Commissioners to submit question. At the first regular monthly meeting of the board of county commissioners of the county immediately following such filing the petition shall be called to the attention of the board by the county clerk; and the board shall immediately direct the submission of the question appearing in the petition to the registered voters of the county at the ensuing general election for that year.

History: En. Sec. 21, Ch. 148, L. 1931; question appearing in the petition" after
amd. Sec. 3, Ch. 261, L. 1963. "submission"; and deleted from the end of the section the words "of the question whether the county high school of the county should be abolished."

Amendment

The 1963 amendment inserted "of the

75-4123. (1262.22) Publication of notice and preparation of poll books. The county clerk of the county shall publish a notice of the filing and purpose of the said petition, which notice shall contain the question of either abolishing the county high school or of unifying the county high school with and making it a part of the public school system of the school district in which it is located. The notice shall also state that the said question will be submitted at the ensuing general election. The notice shall be published at least once a week for four successive weeks in some newspaper of general circulation published in the county, and, if there

be none, in such newspaper as the board of county commissioners may designate, the first publication of such notice to be made between September 1 and September 15 of the said year. The county clerk of said county shall prepare suitable poll books containing the names of all registered electors at the expense of the county.

History: En. Sec. 22, Ch. 148, L. 1931; amd. Sec. 4, Ch. 261, L. 1963.

Amendment

The 1963 amendment divided the former text into three sentences; inserted "which notice shall contain the question of either abolishing the county high school or of unifying the county high school with and making it a part of the public school

system of the school district in which it is located" at the end of the first sentence; substituted the second sentence for "and that the question of abolishing the county high school in the county will be submitted at the ensuing general election"; inserted "The notice shall be published" at the beginning of the third sentence; and added the fourth sentence.

75-4124. (1262.23) Further notice required—manner of holding election—ballots. Further notice of the submission of the question shall be given, and such question shall be submitted to the registered voters of the county at the ensuing general election in November, and the votes cast thereon canvassed and returns thereof made in the manner provided by law for the election of county officers at that election, subject, however, to the following special requirements:

If the question is to abolish the county high school, the votes for or against abolishment of the county high school shall be cast by ballot in substantially the following form under A. But if the question is to unify the county high school and make it a part of the public school system of the school district in which the county high school is located, then a ballot similar to form B shall be used.

A. Abolishment of county high school.

- ☐ For the abolishment of the county high school.
- ☐ Against the abolishment of the county high school.

B. Unification of county high school.

- ☐ For the unification of the county high school.
- ☐ Against the unification of the county high school.

An elector may vote for the question submitted to him for consideration by placing an "X" in the square immediately before the words "For the abolishment (or unification) of the county high school"; and a ballot so marked and cast shall be counted in favor of abolishing (or unifying) the county high school. An elector may vote against the question submitted to him for consideration by placing an "X" in the square immediately preceding the words "Against the abolishment (or unification) of the county high school"; and a ballot so marked and cast shall be counted against abolishing (or unifying) the county high school.

History: En. Sec. 23, Ch. 148, L. 1931; amd. Sec. 5, Ch. 261, L. 1963.

Amendment

The 1963 amendment substituted the second paragraph for a paragraph reading, "The votes for or against the abolishment of the county high school shall be cast by ballot which shall be in substantially the following form:"; inserted

the caption for form A; inserted form B; substituted "the question submitted to him for consideration" in the final paragraph for "abolishing the county high school" and "the abolishment of the county high school"; and inserted "(or unification)," "(or unifying)," "(or unification)," and "(or unifying)" in the final paragraph.

75-4125. (1262.24) Action by board of county commissioners when election favors abolishing or unifying county high school. If a majority of all votes cast at such general election upon the question of the abolishment or the unification of the county high school with and making it a part of the public school system of the school district in which the county high school is located shall be in favor of abolishing or unifying the same the board of county commissioners of the county at its first regular meeting in December following the election shall make and enter at large upon its minutes an abstract of the votes so cast and a resolution that in accordance therewith on and after July 1st of the year immediately following the county high school of the county shall be, and is thereby abolished, or, in case of unification, that the county high school shall be and is thereby unified with and made a part of the public school system of the school district in which the county high school is located, and that the board of trustees of said county high school shall be and is thereby dissolved, and that its powers and duties shall be and are thereby assigned to the board of trustees of the school district with which the county high school was unified, provided, that the board of trustees of said school district shall have, and is hereby given the power and authority to prepare and adopt the preliminary high school budget for the ensuing fiscal year beginning on said July 1st.

History: En. Sec. 24, Ch. 148, L. 1931; amd. Sec. 6, Ch. 261, L. 1963.

Amendment

The 1963 amendment inserted "or the unification" and "or unifying"; inserted

the words "with and making it a part of the public school system of the school district in which the county high school is located"; added that part of the section following "is thereby abolished"; and made minor changes in phraseology.

75-4126. (1262.25) When election favors retaining high school. But if a majority of all votes cast at such election shall be against the abolishment, or the unification, of the county high school a similar abstract of the votes shall in like manner be entered by the board of county commissioners at large upon their minutes at its December meeting aforesaid; and no further submission of the question of abolishing or unifying the county high school shall be had in that county for at least two (2) years thereafter, provided that if an election against the abolishment of the county high school has been had within any county within two years prior to the enactment of this statute, that the question shall not again be resubmitted for at least two (2) years after the date that this act becomes effective.

History: En. Sec. 25, Ch. 148, L. 1931; amd. Sec. 7, Ch. 261, L. 1963.

Amendment

The 1963 amendment inserted "or the

unification" and "or unifying"; and reduced the waiting period for a new election from four to two years from the previous election or from the effective date of the act.

75-4127. (1262.26) Disposition of unexpended funds of county high school after abolishment or unification. When any county high school is abolished pursuant to law all unexpended moneys belonging to such high school shall be applied and paid as follows:

1. To the payment of outstanding warrants issued by the board of trustees of the county high school.

2. To the payment of the interest and principal of outstanding bonds issued for county high school purposes.

3. To the credit of the funds of the school districts of the county which maintain and conduct accredited high school classes, the apportionment among such districts to be made according to the average daily attendance as determined by the county superintendent of schools at such accredited high school classes for the school year immediately next preceding the effective date of the abolishment of the county high school. But if the school district in which the county high school was located shall establish an approved high school, or approved high school classes, for the school year immediately following upon the effective date of the abolishment of the county high school such school district shall share in the distribution of any unexpended balance of the funds of the county high school upon the basis of the average daily attendance at the county high school in approved high school classes during the last school year of its existence. When any county high school is unified pursuant to the provisions of this chapter, all unexpended moneys belonging to such high school, other than funds that were raised for the purpose of paying the interest and principal of outstanding bonds issued for county high school purposes, shall be paid in the following manner:

1. To the payment of the outstanding warrants and current invoices for material and services purchased by the board of trustees of the county high school.

2. Any remainder shall be deposited to the credit of the school district in which the county high school was located to be used in the budget for the operation of the district high school.

History: En. Sec. 26, Ch. 148, L. 1931;
amd. Sec. 8, Ch. 261, L. 1963.

Amendment

The 1963 amendment added the final sentence and the two numbered clauses subsidiary thereto.

75-4128. (1262.27) Disposition of property of county high school when abolished or unified—inventory—appraisal—compensation of appraisers. When any county high school is abolished all its real and personal property, other than its moneys, shall be disposed of in the following manner: The district court of the county in which such high school was located on application of the board of county commissioners shall appoint three competent persons, residents of the county, to inventory and appraise all such real and personal property of the said county high school. In making such appraisement the appraisers shall take into account ordinary depreciation, and the adaptability or lack of adaptability of the buildings, grounds, and other real estate, and of the various articles of personal property to any special use for which such property may be sold. The appraisers shall be allowed their necessary expenses, including mileage at the rate of ten (10) cents per mile from their respective residences to the place where the property of the county high school is found, and return, expenses and mileage to be paid out of any moneys belonging to the county high school, or, if none, out of the general fund of the county, upon the order of the district court. When any county high school is unified with and made a part of the public school system

of the school district in which it is located according to this chapter, all its real and personal property, including all appurtenances and hereditaments, except as otherwise provided for in this chapter, shall become and remain the property of the school district with which it was unified without an inventory and appraisalment.

History: En. Sec. 27, Ch. 148, L. 1931; **Amendment**
amd. Sec. 9, Ch. 261, L. 1963.

The 1963 amendment added the final sentence.

75-4130. (1262.29) Board of county commissioners to sell—manner of sale—execution of deeds. Upon the adoption or approval of the appraisalment the board of county commissioners of the county shall proceed to sell all of such property after notice and in the manner provided by law for the sale by the board of other county property; and upon any such sale of all or any portion of such property pursuant to law and the payment to the county treasurer of the purchase price the said board shall be fully authorized and empowered to make and execute in the name of the county all necessary and appropriate deeds, bills of sale and other instruments for the conveyance of title to the purchaser or purchasers; provided, that if the county high school was unified with and made a part of the public school system of the school district in which it was located pursuant to the provisions of this chapter, the board of county commissioners of the county shall make and execute in the name of the county all necessary and appropriate deeds, bills of sale and other instruments for the conveyance of title to the school district with which the county high school was unified.

History: En. Sec. 29, Ch. 148, L. 1931; **Amendment**
amd. Sec. 10, Ch. 261, L. 1963.

The 1963 amendment added the proviso at the end of the section.

75-4133. (1262.32) Disposition of taxes levied for county high school but unpaid before abolishment or unification. All taxes levied for the support of any county high school which is thereafter abolished before such taxes are collected shall, when collected, be paid over into the fund created by the special high school tax levied in the county, and apportioned and disbursed as a part of such fund, and, if there be no such fund, then into the general school fund of the county, provided, however, that if any county high school is unified, all taxes levied for the county high school shall be paid to the school district for the support of the district high school established by the unification.

History: En. Sec. 32, Ch. 148, L. 1931; **Amendment**
amd. Sec. 11, Ch. 261, L. 1963.

The 1963 amendment added the proviso at the end of the section.

75-4134. (1262.33) Liquidation of bonded indebtedness of county high school upon abolishment or unification. If the funds of any county high school which has been abolished, and the proceeds of the sale of all its property according to law, are not sufficient to pay all the outstanding warrants, bonds and other legal obligations of the said high school, it shall be the duty of the county commissioners and of the board of trustees of the said high school annually to ascertain the amount of such warrants,

bonds and other outstanding indebtedness and to make such annual tax levies according to law as may be necessary to pay and retire such warrants, bonds and/or other outstanding obligations, all in the same manner and by the same means as though the said county high school had not been abolished; and for such purpose and until such indebtedness be fully paid and discharged the board of trustees of the said county high school shall be continued in existence and shall function, and together with the board of commissioners of the county shall exercise and have the same powers for retiring and paying such indebtedness as though the said county high school were still functioning and in existence. When a county high school is unified with and made a part of the public school system of the school district in which it is located, all outstanding bonds shall remain the liability of the county or that portion of the county against which the bonds were originally issued. It shall be the duty of the county commissioners and the board of trustees of the school district with which the county high school was unified to ascertain annually the amount of such bonds and to make such annual tax levies according to law as may be necessary to pay and retire such bonds in full, all in the same manner and by the same means as though the said county high school had not been unified.

History: En. Sec. 33, Ch. 148, L. 1931;
amd. Sec. 12, Ch. 261, L. 1963.

Amendment

The 1963 amendment added the second and third sentences.

75-4138. (1262.37) School districts may establish high schools and county high schools a branch—transportation. Whenever the interests of any school district or a county high school require it, the board of trustees of the district or the board of trustees of the county high school, with the approval of the superintendent of public instruction, may establish a high school for the district or a branch of the county high school and make the provisions for its quarters, equipment, and teaching force in the manner provided for in section 75-4139, provided, if any school district acquires the real and all other property of a former county high school by means of unification pursuant to this chapter, the board of trustees of such school district shall have the authority by resolution to establish a district high school using therefor the real and other property of the former county high school without further action or any approval and the high school established shall be the high school of the high school district in which located, if the county has been divided into high school districts.

History: En. Sec. 37, Ch. 148, L. 1931;
amd. Sec. 1, Ch. 159, L. 1939; amd. Sec.
1, Ch. 152, L. 1963; amd. Sec. 13, Ch. 261,
L. 1963.

has made a composite section incorporating the changes made by both.

Amendments

Compiler's Note

This section was amended twice in 1963, once by Ch. 152 and once by Ch. 261. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, however, the compiler

Chapter 152, Laws 1963, inserted "or a county high school," "or the board of trustees of the county high school," and "for the district or a branch of the county high school" in the first part of the section; and made a minor change in phraseology.

Chapter 261, Laws 1963, substituted the

proviso for two former provisos, for text of which see parent volume.

Repealing Clause

Section 14 of Ch. 261, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 15 of Ch. 261, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 13, 1963.

75-4139. (1262.38) Approval of superintendent of public instruction—how secured. When the board of trustees of any school district desires to establish a high school, or a county high school desires to establish a branch of the county high school, it shall petition the superintendent of public instruction, prior to June first of the current year for the permission to do so, setting forth in writing the facts regarding the enrollment in the elementary grades, the distance to other high schools, the road conditions, the taxable valuation of the district, the building facilities and such other information as the state superintendent may require. An investigation shall be made thereafter by a designated representative of the superintendent of public instruction and his report on the petition filed with it before the petition is acted upon. The superintendent of public instruction must have passed favorably on any such petition before the high school or branch of the county high school proposed may be established by the district.

When the establishment of a high school or a branch of the county high school has been approved in accordance with the provisions of this section, the county superintendent of schools shall immediately investigate to find the number of students who will probably attend such newly established high school or branch of the county high school. This number of students shall be used as a basis for making out the budget for the first year of operation. He shall then assist the board of trustees of the school district establishing such high school or the trustees of a county high school establishing a branch, in preparing and submitting a budget for the maintenance of such high school or branch of the county high school. Said budget shall, otherwise than specified above, be prepared, submitted, approved and distributed in the same manner as other high school budgets are prepared, submitted, approved and distributed.

History: En. Sec. 38, Ch. 148, L. 1931; amd. Sec. 1, Ch. 9, L. 1933; amd. Sec. 2, Ch. 152, L. 1963.

last sentence of the first paragraph and in three places in the second paragraph; and inserted "or the trustees of a county high school establishing a branch" in the third sentence of the second paragraph.

Amendment

The 1963 amendment inserted "or a county high school desires to establish a branch of the county high school" in the first sentence of the section; inserted "or branch of the county high school" or "or a branch of the county high school" in the

Effective Date

Section 3 of Ch. 152, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

75-4146. (1262.44-A) Expenditure of money for transportation of high school pupils. Whenever any eligible high school pupil has been authorized to attend a high school situated in a county in another state and which county adjoins the state of Montana, as provided in section 75-4230, the board of trustees of the county high school, if there be a county high school for the county in which the pupil resides, or if there be no such

county high school then the board of trustees of the school district in which such pupil resides, may expend any moneys belonging to the county high school, or school district, as the case may be, for the purpose of either paying for transportation of such pupil from the home of such pupil to the high school in the other state which is to be attended, or for board, rent or tuition for such pupil while actually attending such school, in the same manner and to the same extent as such money might be expended for transportation, board, rent or tuition of such pupil if permission were given for attending a high school in another district in the county in which the pupil resides in accordance with the provisions of law.

History: En. Sec. 3, Ch. 217, L. 1939; amd. Sec. 1, Ch. 21, L. 1963.

Amendment

The 1963 amendment substituted "the state of Montana" for "the county in

which such high school pupil resides" after "adjoins" near the beginning of the section; and, at the end of the section, substituted "provisions of law" for "provisions of section 75-4145."

CHAPTER 42—HIGH SCHOOLS—COUNTY—JUNIOR AND DISTRICT—
JOINT SCHOOL SYSTEMS CONTINUED—VOCATIONAL
EDUCATION

Section 75-4230. Attendance outside of county of pupil's residence—transfer of apportionment.

75-4230. Attendance outside of county of pupil's residence—transfer of apportionment. The attendance of any eligible high school pupil at an accredited high school outside of the county of his residence, either within or without the state, must be authorized by the county superintendent of schools of the county of his residence when a pupil lives closer to a high school of another county than to any high school located in the county of his residence, or when due to road or geographical conditions it is impractical to attend the high school of his own district, and when proper application has been made to the county superintendent of schools by the parent or guardian of the pupil for whom such transfer is desired; provided, that the county superintendent of schools may at his discretion require a pupil obtaining such transfer to attend the high school nearest his residence.

In all other cases the county superintendent of schools may authorize at his discretion any eligible pupil to attend a high school in a county outside of his residence.

No payment shall be made for attendance in another state except where such attendance is in a high school in a county adjacent to the state of Montana.

Application for permission to attend a high school outside the county of residence shall be made to the county superintendent of the county of the pupil's residence before July 1, previous to the year of attendance, except in those cases where circumstances make this impossible. The county superintendent must then approve or disapprove these applications and notify the individuals concerned, and the high school to be attended, and the county superintendent of the county where the pupil will attend school. At the end of the school year attended and before

July 15, the clerk of the school district operating the high school attended shall send to his county superintendent the name of all pupils from outside of the county attending his school, together with such pupils' home addresses and the number of days such pupils actually attended his high school, who in turn will transmit this information to the county superintendent of the pupils' residence.

Tuition for the year attended is hereby made an obligation of the county of residence for the following year. Before August 1 each year, the county superintendent of the county of residence of the pupils concerned shall make out a high school transfer budget. The total of such transfer budget shall be determined by multiplying the number of pupils attending high school outside of his county by two hundred fifty dollars (\$250.00) in the case of attendance at a high school with an average number belonging up to one hundred (100) pupils; two hundred twenty-five dollars (\$225.00) in case of attendance at a high school with an average number belonging from one hundred one (101) to four hundred (400); and two hundred dollars (\$200.00) in case of attendance at a high school with an average number belonging over four hundred (400); provided further, that the pupil has attended at least forty (40) days.

The total of the transfer budget shall be subtracted from the receipts from the basic special tax for high schools as provided for in section 75-4516.1 before the remainder of such receipts is distributed to the high schools of the county. Such total of the transfer budget shall be held in a transfer fund separate and apart from other school funds and shall be allocated by the county treasurer upon instructions from the county superintendent.

In December of each year the county superintendent of the county of the pupil's residence shall notify his county treasurer of the amount to be transferred to each high school educating the pupil concerned, and the said county treasurer shall forthwith remit said amounts to the county treasurer of the county in which such high schools are located. The county treasurer receiving such transfers of money shall place the amount to the credit of the general fund of the high school concerned. Receipts by any high school for tuition are to be used against the needs of the budget after county and state aid have been received.

Whenever pupils are inmates of the Montana children's center at Twin Bridges and attend the public high school in Twin Bridges, the latter school shall receive from moneys available for state equalization aid four hundred dollars (\$400.00) for each such pupil; provided, however, that this amount of tuition is not considered as a part of regular state equalization aid. Application for this tuition from the state is to be made in the same manner and at the same time as for regular state equalization aid.

Whenever pupils residing in Montana are approved for attendance in a high school in an adjoining state, and whenever pupils in an adjoining state are approved for attendance in a high school in Montana, the above schedule of tuition payments may be waived, and payments arrived at on the reciprocal basis with the state involved. The state superintendent of public instruction is hereby authorized to negotiate with the state superintendent of public instruction of each state involved in arriving at

tuition payments, which may either be on a per pupil basis of a flat amount or on an actual cost basis.

History: En. Sec. 81, Ch. 148, L. 1931; amd. Sec. 4, Ch. 217, L. 1939; amd. Sec. 1, Ch. 219, L. 1943; amd. Sec. 1, Ch. 146, L. 1949; amd. Sec. 3, Ch. 106, L. 1951; amd. Sec. 1, Ch. 22, L. 1953; amd. Sec. 1, Ch. 70, L. 1959; amd. Sec. 2, Ch. 21, L. 1963; amd. Sec. 1, Ch. 162, L. 1963; amd. Sec. 13, Ch. 267, L. 1963.

Compiler's Note

This section was amended three times in 1963, once by Ch. 21, once by Ch. 162, and once by Ch. 267. Chapter 267 included one of the changes made by Ch. 162, but otherwise none of the amendatory acts mentioned nor included the changes made by either of the others. Since the amendments do not appear to conflict, however, the compiler has made a composite section incorporating the changes made by all three amendments.

Amendments

Chapter 21, Laws 1963, substituted "another county" for "an adjoining county" after "lives closer to a high school of"

near the middle of the first paragraph; and substituted "the state of Montana" for "the county of the student's residence" at the end of the third paragraph.

Chapter 162, Laws 1963, substituted "children's center" for "state orphans' home" in the eighth paragraph; and increased the reimbursement specified in the eighth paragraph from \$250 to \$400 per pupil.

Chapter 267, Laws 1963, substituted "the basic special tax for high schools as provided for in section 75-4516.1" near the beginning of the sixth paragraph for "the county ten (10) mill levy for high schools"; incorporated in the eighth paragraph the change in the reimbursement rate made by Ch. 162, Laws 1963; substituted "shall receive from moneys available for state equalization aid" in the eighth paragraph for "shall be reimbursed from the state public school equalization fund at the rate of"; and inserted "regular" in the proviso to the first sentence in the eighth paragraph.

CHAPTER 43—DESIGNATION OF HIGH SCHOOLS AS VOCATIONAL TRAINING CENTERS

Section 75-4303. Eligibility and procedure for admission.

75-4304. Attendance of persons residing outside county.

75-4303. Eligibility and procedure for admission. Vocational training centers designated by the state board for vocational education shall admit for training any resident of the state of Montana, between the ages of sixteen (16) and twenty-one (21) years, provided that any such resident of the state, residing out of the county wherein a vocational center is located, shall make application for admission to training on or before the first day of June of the school year preceding the opening of the next school year. Notice of the acceptance or rejection of such applicant shall be given by the local authority of the training center on or before the first of July, following receipt of the application. Notice of the acceptance of the applicant shall be presented to the county superintendent of schools and the board of county commissioners of the applicant's residence on or before the 15th day of July.

History: En. Sec. 3, Ch. 160, L. 1939; amd. Sec. 1, Ch. 77, L. 1963.

Amendment
The 1963 amendment deleted the words "on a nontuition basis" which followed "admit for training" in the first sentence.

75-4304. Attendance of persons residing outside county. When attendance of any eligible person between the ages of sixteen (16) and twenty-one (21) years at a designated vocational training center, outside of the county of his residence, is authorized, as provided in section 75-4303, the board of county commissioners of the county of such residence must

forthwith direct the county treasurer to pay from the high school transfer fund to the board of trustees of the school district, high school district or county high school designated as a vocational training center at which attendance has been authorized the sum of two hundred fifty dollars (\$250) a year. The names of all applicants entitled to admission to the training center who are residents of the county wherein such center is located, shall be added to the list of those eligible to be counted for high school attendance.

History: En. Sec. 4, Ch. 160, L. 1939; amd. Sec. 2, Ch. 77, L. 1963.

Amendment

The 1963 amendment substituted "two hundred fifty dollars (\$250) a year" at the end of the first sentence for "fifty cents (50c) per day for each and every day of attendance at the time of the June apportionment, provided that attendance for less than thirty-five days shall not be counted, and further provided that the total amount apportioned for

each attendant for each school year shall not exceed the sum of \$90.00."

Repealing Clause

Section 3 of Ch. 77, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 77, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 26, 1963.

CHAPTER 45—HIGH SCHOOL BUDGET ACT

Section 75-4516.1. Levy of taxes.

75-4518.1. Reduction in budget by budget board—allowance of additional expenses over foundation program.

75-4507 to 75-4510. Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 133, L. 1945), constituting temporary and ob-

solete authority for special increases in high school budgets, were repealed by Sec. 16, Ch. 267, Laws 1963.

75-4516.1. Levy of taxes. (1) Basic high school levy. On or before the first day of August in each year, the state superintendent of public instruction shall compute and determine the sum of money which, when added to the moneys available for the state equalization aid shall provide seventy-five per cent (75%) of the maximum high school budgets for all high schools as set forth in sections 75-4518.1 and 75-3612, plus the amount of high school tuition. Such information shall be given to the state board of equalization who shall compute and determine the number of mills of a tax (herein called the basic high school tax) on the taxable value of all property within all the counties of the state which is calculated to produce the aforesaid sum of money.

If a levy of less than the number of mills so determined is sufficient to provide the total foundation programs from the general fund budgets of all school districts within one or more counties, the state board of equalization shall recompute the basic high school tax to be levied in the remaining counties, excluding in the computations the amount of the foundation programs in the county or counties requiring a lesser levy, thus determining as the adjusted basic high school tax the number of mills required to produce the sum of money which, when added to all the moneys available for state equalization aid to be distributed to all high schools except those which as hereinafter provided are not entitled

to apportionment of state equalization aid, shall equal the total of the foundation programs of all high schools except those not entitled to apportionment of state equalization aid. In no event shall the adjusted basic high school tax exceed fifteen (15) mills.

In addition to the provisions for the support of the high schools hereinbefore provided, it shall be the duty of the board of county commissioners of each county in the state to levy on the taxable valuation of all taxable property in the county the number of mills determined by the board of equalization as the adjusted basic high school tax, except that the board in any county in which a levy of less than the number of mills so determined is sufficient to provide the total foundation programs from the general fund budgets for all high schools within the county shall levy such lesser number of mills.

The levy in each county shall be made at the time and in the manner provided by law for the levying of taxes for county purposes, and the tax shall be collected by the county treasurer at the same time and in the same manner as state and county taxes are collected.

No county levying less than the adjusted basic high school levy shall receive any apportionment of state equalization aid.

(2) Additional high school levy. The county commissioners shall, if necessary, levy an additional tax in such number of mills on the taxable value of all taxable property within the county as shall be required to provide the foundation program for all school districts and county high schools within the county. The county superintendent shall apportion the proceeds of such additional tax levy to each school district and county high school within the county after apportionment of the basic special tax for high schools as provided in section 75-3618 and the state public school equalization funds as provided in section 75-3619.

(3) Permissive high school levy. If the revenues for the operation and maintenance of any high school, including the amount apportionable from said basic special tax for high schools and the amount, if any, produced by said additional high school tax, shall be less than the foundation program of such high school and the approved additions thereto included in its budget, within the limitations hereinbefore specified, it shall be the further duty of the board of county commissioners to fix and levy a tax, in such number of mills as will produce the amount shown by the final budget to be raised by tax levy plus federal reimbursements in lieu of taxes, which tax shall, in the case of a county high school not located within a building district, be levied upon all property in the county, excepting the property of any district supporting a district high school, and shall, in the case of a county high school located within a high school building district, be levied upon all property in such building district and which tax shall, in the case of a district high school not located within a building district, be levied upon all property within the school district, and shall, in the case of a district high school located within a building district, be levied upon all property in such building district, provided, however, that such last mentioned additional tax shall not, in any event, be used to raise funds in excess of the maximum budgets as specified in sec-

tion 75-4518.1 when considered with all other sources of revenues, unless approved by a vote of the taxpaying electors.

History: En. Sec. 15, Ch. 199, L. 1949; amd. Sec. 4, Ch. 208, L. 1951; amd. Sec. 1, Ch. 202, L. 1953; amd. Sec. 1, Ch. 246, L. 1961; amd. Sec. 14, Ch. 267, L. 1963.

Amendment

The 1963 amendment completely rewrote this section. For previous text, see parent volume.

75-4518.1. Reduction in budget by budget board—allowance of additional expenses over foundation program. If the total amount of the proposed general fund expenses in the preliminary budget of any district or county high school shall exceed the foundation program thereof, the budget board shall, in the manner provided by section 75-4518, reduce such proposed general fund expenses to a total equal to said foundation program unless the board of trustees of said district or county high school shall establish to the satisfaction of the budget board that special circumstances exist which justify such additional expenses, and in such event a statement of the reasons for the allowance of such additional expenses shall be attached to said budget and signed by the chairman of the budget board, but the allowance of such excess expense over the foundation program shall not in any manner increase the amounts of state equalization aid to be apportioned hereunder; and provided that, except in the case of the existence of the emergencies specified in section 75-4521, the entire amount of such additional expense over the foundation program to be included in any high school budget including any reserve fund, not to exceed thirty-five per cent (35%) of the amount appropriated in the final and approved budget for the then current school year, for the purpose of maintaining the elementary and high school of the district from July 1 to November 30 of the next succeeding year, plus the foundation program shall not be greater than the maximum amounts in accordance with the following schedules, provided that nothing herein contained shall be construed as preventing the voting of an additional levy in accordance with the general school laws pertaining to the voting of additional levies.

High Schools

(1) For each high school having an ANB of twenty-four (24) or fewer pupils, the maximum shall be twenty-five thousand five hundred dollars (\$25,500.00).

(2) For a secondary school having an ANB of more than twenty-four (24) pupils, the maximum ten hundred sixty-two dollars (\$1,062.00) shall be decreased at the rate of seven dollars (\$7.00) for each additional pupil until the ANB shall have reached a total of forty (40) such pupils. For a school having an ANB of more than forty (40) pupils, the maximum of nine hundred fifty dollars (\$950.00) shall be decreased at the rate of four dollars and seventy-five cents (\$4.75) for each additional pupil until the ANB shall have reached one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, a maximum of six hundred sixty-five dollars (\$665.00) shall be decreased at the rate of one dollar and fifty-five cents (\$1.55) for each additional pupil until the ANB shall have reached two hundred (200) pupils. For a school having an ANB of more than two hundred (200) pupils, the maximum

of five hundred ten dollars (\$510.00) shall be decreased by thirty-five cents (\$0.35) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum of four hundred seventy-five dollars (\$475.00) shall be decreased at the rate of nine cents (\$0.09) until the ANB shall have reached six hundred (600) pupils. Schools having an ANB in excess of six hundred (600) pupils shall receive four hundred forty-eight dollars (\$448.00) per pupil.

The maximum per pupil for all pupils (ANB) and for all schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB.

In computing the amount for the foundation program and the maximum program only junior high schools which have been approved and accredited by the state board of education shall be considered a part of the secondary enrollment.

On or before January 1 of odd-numbered years, the state superintendent of public instruction shall transmit to the legislative assembly of the state of Montana a revised schedule for secondary schools in accordance with classifications by size as set forth in this section. This revised schedule will be based on the median general fund budgeted expenditures for the current year, by ascertaining the median of the general fund budgets for each classification of secondary schools, and the total number of pupils (ANB) for all schools in each classification, and by computing the revised schedule therefrom.

History: En. Sec. 14, Ch. 199, L. 1949; amd. Sec. 3, Ch. 208, L. 1951; amd. Sec. 15, Ch. 267, L. 1963.

Amendment

The 1963 amendment substituted "of state equalization aid to be apportioned hereunder" for "to be apportioned hereunder from the state public school equalization fund" immediately before the first proviso; inserted "plus the foundation program" after "July 1 to November 30 of the next succeeding year" near the end of the first paragraph; substituted "the maximum amounts in accordance with the following schedules" near the end of the first paragraph for "thirty per cent (30%) of the foundation program of any high school, having an ANB of 100 or less pupils, and shall not be greater than

twenty-five per cent (25%) of the foundation program of any high school having an ANB of more than 100 pupils"; added the final proviso to the first paragraph; and added everything after the first paragraph.

Repealing Clauses

Section 16 of Ch. 267, Laws 1963 read "Sections 75-4507, 75-4508, 75-4509, and 75-4510 are repealed."

Section 17 of Ch. 267, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 18 of Ch. 267, Laws 1963 read "This act shall be in full force and effect from and after the fifteenth day of March, 1963."

CHAPTER 46—HIGH SCHOOL DISTRICTS—PUBLIC WORKS

Section 75-4601. High school trustees may undertake public works program—additional trustees—division of taxable valuation—commencement of proceedings.

75-4601. High school trustees may undertake public works program—additional trustees—division of taxable valuation—commencement of proceedings. In any county having a high school the board of trustees of the county high school, if there be one, and the boards of trustees of any

school districts maintaining district high schools, are hereby designated as the boards of trustees of the respective high school districts established under this act, provided that additional members may be elected to the board of trustees of districts maintaining district high schools in the number and manner as follows: When a majority of the boards of the common school districts in the high school district so request, such requests shall be directed to the county superintendent of schools, who shall proceed as directed in this act.

The taxable valuation of the district in which the high school is located shall be divided by the number of trustees on the high school board. In the case of a first class district this number shall be seven (7), for a second class district five (5), and for a third class district three (3). This figure obtained shall then be divided into the remaining valuation of the high school district, and the resulting number, to the closest whole number, shall be the number of additional board members to be elected; provided, that the number of these additional board members shall not exceed four (4) in districts of the first and second class or two (2) in districts of the third class.

(a) Following the determination of the number of additional board members to be elected, the county superintendent of schools shall district the territory of the high school district, excluding the common school district wherein the high school is located, into a number of trustee nominating districts equal to the number of additional board members to be elected, and each trustee nominating district so established shall be entitled to one (1) member on the board of trustees of the high school.

The election of the additional trustees shall be held on the first Saturday in April of every year to fill the expired terms of such additional trustees, and the term of office of such additional trustees after the first election of such trustees shall be for three (3) years.

The additional trustees so elected shall be residents of the respective trustee nominating districts established by the county superintendent of schools, and shall meet the general qualifications for school district trustees provided by section 75-1601, Revised Codes of Montana, 1947.

At the first election the additional trustees elected from the trustee nominating districts established by the county superintendent of schools, if there be more than one, shall cast lots to determine the length of time each shall hold office. If there is one (1) additional trustee, he shall hold office for three (3) years. If there are two (2) additional trustees, one shall hold office for three (3) years and one for two (2) years. If there are three (3) additional trustees, one shall hold office for three (3) years, one for two (2) years and one for one (1) year. If there are four (4) additional trustees, two shall hold office for three (3) years, one for two (2) years and one for one (1) year.

The procedure for calling and holding elections, and for the assumption of office, for the school district wherein the high school is located shall govern the election of the additional trustees herein provided for.

At least twenty (20) days preceding the election, any ten (10) electors of any trustee nominating district established as provided for in this act, who are qualified to vote in the election for such additional

trustee, shall file with the district clerk of the school district wherein the high school is located the nomination of any qualified person to be a candidate for such trustee from such nominating district. Ballots for the election of such additional trustees shall be prepared in the same form and manner as ballots are prepared for other trustees, providing that such ballots for additional trustees shall show clearly the trustee nominating district from which each nominee is a candidate.

Any qualified elector of any nominating district, excluding the district where the high school is located, may vote for the additional trustees so nominated, at the time and place of the annual election of school trustees in the common school district in which he is entitled to vote, provided that each elector may vote for no more than one such additional trustee from each trustee nominating district.

A vacancy in the office of additional trustee shall be filled by appointment by the county superintendent of schools; provided, that such appointment shall be subject to confirmation by a majority of the remaining members of the high school district board including the additional members. The trustee so appointed shall hold office until the next annual election, at which election there shall be elected a trustee from the same nominating district for the unexpired term.

(b). * * * [Same as parent volume.] ✓

History: En. Sec. 1, Ch. 275, L. 1947; amd. Sec. 1, Ch. 188, L. 1951; amd. Sec. 1, Ch. 67, L. 1957; amd. Sec. 1, Ch. 167, L. 1959; amd. Sec. 1, Ch. 222, L. 1963.

graph; and completely rewrote subdivision (a), for previous text of which see parent volume.

Repealing Clause

Amendment

The 1963 amendment made a minor change in punctuation in the first para-

Section 2 of Ch. 222, Laws 1963 repealed all acts and parts of acts in conflict therewith.

CHAPTER 48—SCHOOL LUNCH PROGRAM

Section 75-4802. Expenditure of federal funds.

75-4802. Expenditure of federal funds. The superintendent of public instruction is hereby authorized to accept and direct the disbursement of funds appropriated by act of Congress and apportioned to the state for use in connection with school lunch programs, under the "National School Lunch Act," approved June 4, 1946 (Public Law 396, 79th Congress, Chapter 281, 2nd Session), and any amendments thereto. The superintendent of public instruction shall deposit all such funds received from the federal government with the treasurer of the state who shall deposit them in the federal and private grant clearance fund and make disbursements therefrom upon the direction of the superintendent of public instruction.

History: En. Sec. 2, Ch. 282, L. 1947; amd. Sec. 65, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words "in a special account" after the words

"from the federal government" in the second sentence; and inserted "deposit them in the federal and private grant clearance fund and" in the second sentence.

CHAPTER 50—EDUCATION CLASSES FOR MENTALLY AND PHYSICALLY HANDICAPPED CHILDREN

Section 75-5001. Special education—mentally retarded children—physically handicapped children.

75-5003. Local boards of trustees—powers—determination of children requiring special education and the type of education responsibility of state superintendent—reimbursement by state—computation.

75-5001. Special education—mentally retarded children—physically handicapped children. Within the meaning of this act special education is that type of education requiring special facilities or instruction because of physical or mental deviation from the average on the part of some children. These handicapped are defined as follows:

(1) Mentally retarded children are children who are not capable of profiting from the general educational program of the public schools. These children may be considered in three groups as follows: (a) Educable mentally retarded. Those children who, at maturity, cannot be expected to attain a level of intellectual functioning greater than that commonly expected from an eleven-year-old, but not less than that of a seven-year-old. (b) Trainable mentally retarded. Those children who, at maturity, cannot be expected to attain a level of intellectual functioning greater than that commonly expected of a seven-year-old and who, for entrance into a training program, are capable of walking, of clean bodily habits, and of obedience to simple commands. (c) Custodial mentally retarded. Those children who do not show a likelihood of attaining clean bodily habits, responsiveness to directions, or means of intelligible communication. The public schools are to assume responsibility for the educable group, and may assume responsibility for the trainable group.

(2). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 206, L. 1955; amd. Sec. 1, Ch. 243, L. 1963.

Amendment

The 1963 amendment substituted "mentally retarded" for "mentally handi-

capped" throughout paragraph (1); deleted "handicapped" after "educable" in the final sentence of paragraph (1); and added the words "and may assume responsibility for the trainable group" at the end of paragraph (1).

75-5003. Local boards of trustees—powers—determination of children requiring special education and the type of education responsibility of state superintendent—reimbursement by state—computation. The board of trustees in each school district, when it appears that there are not less than ten (10) educable mentally retarded or physically handicapped children in the district, must maintain special classes for educable mentally retarded children or for physically handicapped children, (and may provide classes for the trainable mentally retarded children,) or may arrange to use the services of such approved mentally retarded or physically handicapped children's classes as may exist within the state, or may provide transportation services from home to school and return for all handicapped children enrolled in a state approved special education program of such ages as it deems wise; provided, that the local board has the right to exclude persons of low intelligence or severe delinquent be-

havior. The determination of the children requiring special education and the type of special education needed by these handicapped children shall not be the responsibility of local boards of trustees but shall be the responsibility of the state superintendent of public instruction in cooperation with appropriate medical, psychiatric and psychological advice listed above. Two (2) or more districts may combine to provide such educational facilities.

Reimbursements on the part of the state for such programs shall be computed on the basis of counting each such mentally retarded child in such special classes as three (3) in average number belonging, and each physically handicapped child according to a schedule to be prepared by the state superintendent of public instruction, but in no case shall it be over three (3) average number belonging for each such child, prorated according to time and number in these special classes, or in home tutoring. Transportation reimbursements shall be made on a schedule arrived at by the state superintendent of public instruction, and such expenditures shall be added to the transportation budget of the district. The state shall reimburse two-thirds of such approved transportation and the county shall reimburse the remainder of such approved transportation according to said schedule.

Any child who is mentally retarded, or physically handicapped, or both, who is enrolled in a state-approved elementary school special education program which is maintained by a district other than the district in which such child resides, shall be included in the computation of average number belonging to the district maintaining the special education program, according to the provisions herein. The district in which such child resides shall pay to the district where such child attends an amount of tuition based on the tuition rates established in section 75-1630, and such payment shall be made in the manner prescribed by section 75-1630.

Any such child who is enrolled in a state-approved high school special education program which is maintained by a high school located in a county other than the county in which such child resides, shall be included in the computation of the average number belonging to the high school maintaining the special education program, according to the provisions herein. The county in which such child resides shall pay to the high school where such child attends an amount of tuition based on the tuition rates established in section 75-4230, and such payment shall be made in the manner prescribed by section 75-4230.

When children are sent to an institution supported solely by funds of the state of Montana the home district or county will not be required to pay tuition for such child.

History: En. Sec. 3, Ch. 206, L. 1955; amd. Sec. 1, Ch. 108, L. 1959; amd. Sec. 1, Ch. 41, L. 1961; amd. Sec. 2, Ch. 243, L. 1963.

Amendment

The 1963 amendment inserted "(and may provide classes for the trainable

mentally retarded children,)" in the first sentence of the first paragraph.

Effective Date

Section 3 of Ch. 243, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 11, 1963.

CHAPTER 51—FEDERAL AID

Section 75-5101. Federal funds—authority to accept.

75-5101. Federal funds—authority to accept. The governor of the state of Montana and the superintendent of public instruction of the state of Montana are hereby authorized on behalf of the state of Montana to request and accept such funds as are now or will be made available under any act of Congress of the United States, or otherwise, for purposes of public school building construction and/or for any other purposes in the operation and maintenance of public schools as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. Said moneys shall be deposited by the governor and superintendent of public instruction with the treasurer of the state of Montana.

History: En. Sec. 1, Ch. 173, L. 1957; cial fund hereinafter created" after "superintendent of public instruction" in the
amd. Sec. 67, Ch. 147, L. 1963. last sentence.

Amendment

The 1963 amendment deleted "in a spe-

75-5102. Repealed.

Repeal

This section (Sec. 2, Ch. 173, L. 1957), fund and expenditures therefrom, was re-
relating to the federal aid to education pealed by Sec. 242, Ch. 147, Laws 1963.

REVISED CODES
OF
MONTANA

VOLUME 5
1963 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 5 OF THE
1947 REVISED CODES

AND

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For index see pocket supplement to Replacement Volume 9

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CHAPTER 1—STATE SOIL AND WATER CONSERVATION DISTRICTS LAW

- Section 76-101. Short title.
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76-101. Short title. This act may be known and cited as “the state soil and water conservation districts law.”

History: En. Sec. 1, Ch. 72, L. 1939;
amd. Sec. 1, Ch. 73, L. 1961.

Amendment

The 1961 amendment inserted “and water” in the name of the law.

76-102. Legislative determinations, and declaration of policy. It is hereby declared, as a matter of legislative determination:

A and B. * * * [Same as parent volume.]

C. The appropriate corrective methods. That to conserve soil resources and control and prevent soil erosion, and prevent floodwater and sediment damages and further the conservation, development, utilization and disposal of water, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil-conserving land-use practices and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of water spreaders, terraces, terrace outlets, check dams, desilting basins, floodwater retarding structures, channel improvements, floodways, land drainage, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees and grasses; forestation and reforestation; rotation of crops, restriction of number of livestock grazed, deferred grazing, rodent eradication; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; retardation of run-off by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

D. Declaration of policy. It is hereby declared to be the policy of

the legislature to provide for the conservation of soil and soil resources of this state, and for the control and prevention of soil erosion, and for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands and protect and promote the health, safety, and general welfare of the people of this state.

History: En. Sec. 2, Ch. 72, L. 1939; amd. Sec. 1, Ch. 5, L. 1959.

Amendment

The 1959 amendment in subd. C inserted the words "and prevent floodwater and sediment damages and further the conservation, development, utilization and disposal of water"; inserted the words "and works of improvement for flood prevention and the conservation, develop-

ment, utilization, and disposal of water"; inserted the words "desilting basins, floodwater retarding structures, channel improvements, floodways, land drainage" and inserted the words "land drainage" after the words "contour furrowing." In subd. D the amendment inserted the clause beginning with the words "and for the prevention" and ending with the words "and disposal of water."

76-103. Definitions. Wherever used or referred to in this act, unless a different meaning clearly appears from the context:

(1) "District" or "soil and water conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with the provisions of this act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth;

(2) to (11). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 72, L. 1939; amd. Sec. 2, Ch. 73, L. 1961.

Amendment

The 1961 amendment in subd. (1) inserted between the words "soil" and "conservation" the words "and water."

76-105. Creation of soil conservation districts. A. Any ten (10) occupiers of land lying within the limits of the territory proposed to be organized into a district may file a petition with the state soil conservation committee asking that a soil and water conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

(1) The proposed name of said district;

(2) That there is need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the territory described in the petition;

(3) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate;

(4) A request that the state soil conservation committee duly define the boundaries for such district; that a referendum be held within the territory so defined on the question of the creation of a soil and water conservation district in such territory; and that the committee determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the state soil conservation committee may consolidate all or any part of such petitions.

B. Within thirty (30) days after such a petition has been filed with the state soil conservation committee, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such district, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this act, and upon all questions relevant to such inquiries. All occupiers of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion in the district, and such further hearing held. After such hearing, if the committee shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety and welfare, for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determinations and in defining such boundaries, the committee shall give due weight and consideration to the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization under the provisions of this act, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determination set forth in section 76-102. The territory to be included within such boundaries need not be contiguous. If the committee shall determine after such hearing, after due consideration of the said relevant facts, that there is no need for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six (6) months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearing held and determinations made thereon.

C. After the committee has made and recorded a determination that there is need, in the interest of the public health, safety, and welfare,

for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil and water conservation districts in this act is administratively practicable and feasible. To assist the committee in the determination of such administrative practicability and feasibility, it shall be the duty of the committee, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum within the proposed district upon the proposition of the creation of the district, and to cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a soil and water conservation district of the lands below described and lying in the county (ies) of _____, _____, and _____" and "Against creation of a soil and water conservation district of the lands below described and lying in the county(ies) of _____ and _____" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the committee. All occupiers of lands lying within the boundaries of the territory, as determined by the state soil conservation committee, shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote.

D and E. * * * [Same as parent volume.]

F. If the committee shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two (2) supervisors to act with the three (3) supervisors elected as provided hereinafter, as the governing body of the district. Such district shall be a governmental subdivision of this state and a public body corporate and politic, upon the taking of the following proceedings:

The two (2) appointed supervisors shall present to the secretary of state an application signed by them, which shall set forth (and such application need contain no detail other than the mere recitals): (1) That a petition for the creation of the district was filed with the state soil conservation committee pursuant to the provisions of this act, and that the proceedings specified in this act were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this act; and that the committee has appointed them as supervisors; (2) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office; (3) the term of office of each of the supervisors; (4) the name which is proposed for the district; and (5) the location of the principal offices of the supervisors of the district. The application shall be subscribed and sworn to by each of the said supervisors before an officer authorized by the laws of this state to

take and certify oaths, who shall certify upon the application that he personally knows the supervisors and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the state soil conservation committee, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid; that the committee did duly determine that there is need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district, and that the result of such referendum showed sixty-five (65) per cent of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the committee did duly determine that the operation of the proposed district is administratively practicable and feasible; the said statement shall set fourth the boundaries of the district as they have been defined by the committee.

The secretary of state shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other soil and water conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the secretary of state shall find that the name proposed for the district is identical with that of any other soil and water conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the state soil conservation committee, which shall thereupon submit to the secretary of state a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the secretary of state shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed, and recorded, as herein provided, the district shall constitute a governmental subdivision of this state and a public body corporate and politic. The secretary of state shall make and issue to the said supervisors without cost a certificate, under the seal of the state, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the state soil conservation committee as aforesaid, but in no event shall they include any area included within the boundaries of another soil and water conservation district organized under the provisions of this act.

G to I. * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961.

Amendment

The 1961 amendment substituted "soil

and water conservation district" for "soil conservation district" each time it appears in the section and in the last paragraph of subd. A inserted the word "part" between "any" and "of."

76-107. Appointment, qualifications and tenure of supervisors. The governing body of the district shall consist of five (5) supervisors, elected as provided hereinabove.

The supervisors shall annually elect a chairman from their members. The term of office of each supervisor shall be three (3) years, except that the supervisors who are first appointed shall be designated to serve for terms of one (1) and two (2) years, respectively, from the date of their appointment. A supervisor shall hold office until his successor has been elected and has qualified. Any vacancy occurring in the office of supervisor shall be filled by appointment by the remaining supervisors until the next regular election, when a successor shall be elected to serve the unexpired term. A majority of the supervisors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A supervisor shall receive no compensation for his services, but he shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties.

The supervisors may employ a secretary and such other officers, agents, and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties, and compensation. The supervisors may call upon the attorney general of the state for such legal services as they may require, or may employ their own counsel and legal staff. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents or employees, such powers and duties as they may deem proper. The supervisors shall furnish to the state soil conservation committee, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as may be required in the performance of its duties under this act.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings, and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be removed by the state soil conservation committee upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959.

The selection of successor to fill an unexpired term, or for a full term shall be by election."

Amendment

The 1959 amendment substituted the sentence in the second paragraph beginning with the words "Any vacancy * * *" for two sentences which read: "Vacancies shall be filled for the unexpired term.

Repealing Clause

Section 2 of Ch. 4, Laws 1959 repealed all acts and parts of acts in conflict therewith.

76-108. Powers of districts and supervisors. A soil conservation district organized under the provisions of this act shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this act:

(1) To conduct surveys, investigations, and research relating to the character of soil erosion, floodwater and sediment damages, and to the conservation, development, utilization, and disposal of water and the preventive and control measures and works of improvement needed, to publish the results of such surveys, investigations, or research, and to disseminate information concerning such preventive and control measures and works of improvement; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies;

(2) To conduct demonstrational projects within the districts on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented and controlled, and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water may be carried out;

(3) To carry out preventive and control measures and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district, including, but not limited to, engineering operations, range management, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in subsection C of section 76-102, on lands owned or controlled by this state or any of its agencies with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands of the necessary rights or interests in such lands;

(4) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupier of lands within the district, in the carrying on of erosion-control and prevention operations, and works of improvement for flood prevention and the conservation, development, utilization and disposal of water within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this act;

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein, and all such property shall be exempt from taxation by the state or any political subdivision thereof, to maintain,

administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this act; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this act;

(6) To make available on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion, and for flood prevention and the conservation, development, utilization, disposal of water;

(7) To construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this act;

(8) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion, and for flood prevention, and conservation, development, utilization, and disposal of water within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable, for the effectuation of such plans, including the specification of engineering operations, range management, methods of cultivation, the growing of vegetation, cropping and range programs, tillage and grazing practices, and changes in use of land; and to publish such plans and information and bring them to the attention of occupiers of lands within the district;

(9) To take over, by purchase, lease, or otherwise, and to administer any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control, or erosion-prevention project, or combinations thereof, located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control, or erosion-prevention project, or combination thereof, within its boundaries; to act as agent for the United States, or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control, or erosion-prevention projects, or combination thereof, within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations;

(10) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers;

to make, and from time to time amend and repeal, rules and regulations not consistent with this act, to carry into effect its purposes and powers;

(11) As a condition to the extending of any benefits under this act to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages thereon;

(12) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959.

Repealing Clause

Section 3 of Ch. 5, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment made numerous changes in this section. For section prior to amendment see parent volume.

76-117. Change of district name—division and combination of districts. (1) Petitions for changing the name of a district organized under this act may be filed with the state soil conservation committee. Any such petition shall be signed by [a] majority of the district supervisors and shall state the present name of the district and the proposed new name. If the committee determines that the proposed new name is not identical with or so similar to that of any other district in the state as to lead to confusion or uncertainty, it shall present a statement of such determination to the secretary of state, who shall issue to the district a certificate, under the seal of the state, evidencing the change of name of the district. Upon the issuance of such certificate, the supervisors of the district shall cause due notice to be given of the change of the name of the district.

(2) A petition may be filed with the state committee for the division of any district or the combination of any two or more districts, or for the division of a district and the combination of any divided part thereof with any other district. Any or all of such actions may be initiated by the filing of a single petition with the committee. Any such petition shall be signed by a majority of the members of each of the governing bodies of the affected districts. The committee shall prescribe the form for such petition. Upon the filing of any such petition, the committee shall within thirty (30) days give due notice of public hearing upon such petition. All occupiers of lands within the affected districts, and all other interested parties, shall have the right to attend such hearing and to be heard. After such hearing, the committee shall determine whether the proposed division, the combination or division and combination of territory is administratively practicable and feasible. In making such determination the committee shall give due regard to the legislative determinations set forth in section 76-102 and to the considerations enumerated in section 76-105, to the extent applicable, relative to determining the practicability and feasibility of creating a district.

(3) If the committee shall determine that the proposed division or combination, or division and combination, is administratively practicable and feasible, the committee shall affect such proposed division, combination, or division and combination by filing with the secretary of state a statement certifying the changes made in the boundaries of the affected districts, together with any change in the name of such districts. If such determination is in the negative the committee shall make and record such determination and shall deny the petition. After six (6) months from the denial of such petition, a new petition may be filed involving any of such proposals.

(4) Upon the division of a district, the supervisors thereof shall allocate the property, rights and liabilities, including contractual obligations, of the district among the resulting parts of the district, giving due consideration to the proportionate size of each such divided part, the number of land occupiers and operating units and the degree and extent of soil erosion therein, and other relevant factors. A statement of such allocation shall be filed with the state committee within thirty (30) days after the notification of the committee's determination in favor of the division of the district. Upon the failure of the supervisors to make, or to agree upon, such allocation, it shall be made by the committee after such hearings as the committee may deem necessary, and with due regard for the standards set out in this paragraph for making such allocations.

History: En. 76-117 by Sec. 1, Ch. 46, L. 1951; amd. Sec. 1, Ch. 41, L. 1959.

changes in this section. For section prior to amendment see parent volume.

Compiler's Note

The bracketed word "a" was inserted by the compiler.

Repealing Clause

Section 2 of Ch. 41, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment made numerous

CHAPTER 2—SOIL CONSERVATION DISTRICT ASSESSMENTS AND FUNDS

- | | | |
|---------|---------|--|
| Section | 76-201. | Notice of organization of district filed. |
| | 76-202. | Copies of notice transmitted to county commissioners and assessor. |
| | 76-203. | Lists of grazing and agricultural lands in district—transmittal to supervisors and county commissioners. |
| | 76-204. | Estimate of money to be raised by assessment. |
| | 76-205. | Division between counties of money to be raised by assessment. |
| | 76-206. | Expenses to be covered by estimate. |
| | 76-207. | Regular assessments. |
| | 76-208. | Maximum regular assessment. |
| | 76-209. | Levy of assessment on grazing and agricultural lands—maximum total levy. |
| | 76-210. | Computation of rate of assessment. |
| | 76-211. | Certification of assessment to assessor—entry on assessment roll. |
| | 76-212. | Application of general law on levy and collection—liability of officers on bond. |
| | 76-213. | "Principal county" defined. |
| | 76-214. | Settlements by county treasurers other than of principal county. |
| | 76-215. | Depository of district funds. |
| | 76-216. | Receipt and crediting of district funds—responsibility on bond. |
| | 76-217. | Payment of district moneys—warrants. |
| | 76-218. | Treasurer's reports. |
| | 76-219. | Purpose of expenditures. |

76-201. Notice of organization of district filed. The supervisors of a soil conservation district shall, within ten (10) days after the creation of the district, or within thirty (30) days after the effective date of this act, cause a notice declaring the district organized to be filed for record in the office of the county clerk and recorder of each county in which any portion of the district is situated.

History: En. Sec. 1, Ch. 253, L. 1963.

Title of Act

An act to provide for the financing of

soil conservation districts by the levy of assessments; providing the procedure therefor; providing an effective date.

76-202. Copies of notice transmitted to county commissioners and assessor. The county clerk and recorder shall, within thirty (30) days after receipt of such notice, transmit a copy of the same to the board of county commissioners, who shall determine whether the district has been lawfully organized, and a copy to the county assessor.

History: En. Sec. 2, Ch. 253, L. 1963.

76-203. Lists of grazing and agricultural lands in district—transmittal to supervisors and county commissioners. The county assessor shall, on or before August 1 of each year, prepare and certify a list of all persons owning grazing and agricultural land within the county and within the district. Certified copies of the list so prepared shall be transmitted to the supervisors of the district and to the board of county commissioners.

History: En. Sec. 3, Ch. 253, L. 1963.

76-204. Estimate of money to be raised by assessment. The supervisors of the district shall from the list so prepared furnish the board of county commissioners an estimate in writing of the amount of money to be raised by assessment which is needed for the next ensuing fiscal year.

History: En. Sec. 4, Ch. 253, L. 1963.

76-205. Division between counties of money to be raised by assessment. If the district lies in more than one county the supervisors of the district shall divide the amount of the estimate in the proportion to the value of the land in the district lying in each county. The value shall be determined from the last assessment rolls of the counties. The supervisors shall furnish the boards of county commissioners of each of the respective counties a statement of the part of the estimate apportioned to the county.

History: En. Sec. 5, Ch. 253, L. 1963.

76-206. Expenses to be covered by estimate. The total amount of the estimate shall be sufficient to raise the amount of money necessary during the ensuing year to pay the incidental expenses of the district, the costs of the work which the supervisors may deem advisable to be done during the ensuing year, the estimated costs of repairs to and maintenance of the property and works of the district, and the estimated expenses of any action or proceeding to which the district is or may be a party, including the cost of employing engineers and attorneys.

History: En. Sec. 6, Ch. 253, L. 1963.

76-207. Regular assessments. Assessments levied pursuant to this act shall be known as regular assessments.

History: En. Sec. 7, Ch. 253, L. 1963.

76-208. Maximum regular assessment. The regular assessment in any one year shall not exceed one half ($\frac{1}{2}$) of one (1) mill on the dollar of total taxable valuation of grazing and agricultural land within the district. The valuation shall be determined according to the last assessment roll.

History: En. Sec. 8, Ch. 253, L. 1963.

76-209. Levy of assessment on grazing and agricultural lands—maximum total levy. The board of county commissioners of each county in which there lies any portion of the district may, annually, at the time of levying county taxes, levy an assessment on the grazing and agricultural land within the county and within the district to be known as the “_____ (name of district) soil conservation district assessment,” sufficient to raise the amount reported to them in the estimate of the supervisors; provided, however, that income from the levy of the assessment provided in this act against any single district shall not exceed one thousand dollars (\$1000).

History: En. Sec. 9, Ch. 253, L. 1963.

76-210. Computation of rate of assessment. The board of county commissioners shall determine the rate of assessment by deducting fifteen per cent (15%) for anticipated delinquencies from the total assessed value of the grazing and agricultural land in the district and in the county and then dividing the sum required to be raised by the remainder of the total assessed value. If a fraction of a cent occurs in a valuation of one hundred dollars (\$100) it shall be taken as a full cent.

History: En. Sec. 10, Ch. 253, L. 1963.

76-211. Certification of assessment to assessor—entry on assessment roll. The board of county commissioners of each county in which any portion of the district is situated may levy the assessment provided in this act. The assessment shall be certified to the county assessor of each of the respective counties and entered on the assessment roll.

History: En. Sec. 11, Ch. 253, L. 1963.

76-212. Application of general law on levy and collection—liability of officers on bond. The provisions of law relating to the levy and collection of county taxes and the duties of county officers with respect thereto, insofar as they are applicable and not in conflict with this act, are hereby adopted and made a part hereof. Said officers are liable on their several official bonds for the faithful discharge of their duties under this act.

History: En. Sec. 12, Ch. 253, L. 1963.

76-213. “Principal county” defined. “Principal county,” as used in this act, means the county in which all or the greatest portion of the land of a district is situated. The principal county remains the same regardless of any change in boundaries.

History: En. Sec. 13, Ch. 253, L. 1963.

76-214. Settlements by county treasurers other than of principal county. The treasurers of each of the counties, other than the principal county shall, not less than twice a year or upon order of the supervisors of the district, settle with such supervisors and pay to the treasurer of the principal county all money belonging to the district and in their possession.

History: En. Sec. 14, Ch. 253, L. 1963.

76-215. Depository of district funds. The treasury of the principal county is the depository of all of the funds of the district.

History: En. Sec. 15, Ch. 253, L. 1963.

76-216. Receipt and crediting of district funds—responsibility on bond. The treasurer of the principal county shall receive and receipt for all money of the district and place the same to the credit of the district. He is responsible on his official bond for the safekeeping and disbursement, in the manner provided in this act, of the money of the district held by him.

History: En. Sec. 16, Ch. 253, L. 1963.

76-217. Payment of district moneys—warrants. The treasurer of the principal county shall pay out money of the district only upon warrants of the county auditor, or in those counties not having an auditor, the county clerk and recorder, drawn upon order of the supervisors of the district signed by at least two (2) of such supervisors.

History: En. Sec. 17, Ch. 253, L. 1963.

76-218. Treasurer's reports. The treasurer shall report in writing at each regular meeting of the supervisors and as often at other times as the supervisors may request the amount of money on hand, and the receipts and disbursements since his last report. Such report shall be verified.

History: En. Sec. 18, Ch. 253, L. 1963.

76-219. Purpose of expenditures. All moneys collected under this act shall be expended for the purposes provided in section 76-115.

History: En. Sec. 19, Ch. 253, L. 1963.

Effective Date

Section 20 of Ch. 253, Laws 1963 pro-

vided the act should be in effect from and after its passage and approval. Approved March 9, 1963.

TITLE 77—SOLDIERS, SAILORS AND MILITARY AFFAIRS

- Chapter 1. Militia, composition, enrollment—officers, general provisions, 77-117, 77-151.
4. General provisions, 77-417, 77-419.
9. Veterans' free tuition at university of Montana, 77-909 to 77-911.

CHAPTER 1—MILITIA, COMPOSITION, ENROLLMENT—OFFICERS, GENERAL PROVISIONS

- Section 77-117. The adjutant-general of the state—assistant adjutants-general.
77-151. Claims against national guard appropriation.

77-117. (1346) The adjutant-general of the state—assistant adjutants-general. There shall be an adjutant-general of the state of Montana, who shall be appointed by the governor, and shall have the rank of major general. He shall hold office for the term for which the governor appointing him shall have been elected, and until his successor shall have been appointed. He shall be selected from the active list of the national guard of this state and shall have been federally recognized in the rank of major or above immediately prior to his appointment. He shall have had at least ten (10) years of service as an officer of the active national guard of this state during the fifteen (15) years immediately prior to his appointment. He shall perform the duties prescribed for him in this chapter and in the regulations now or hereafter issued thereunder, and in the statutes of the United States now or hereafter enacted, and such duties as pertain to the duties of the chiefs of staff departments. The salary of the adjutant-general shall be seventy-five hundred dollars (\$7,500.00) per annum, provided, however, that no part of said salary shall be paid by the state when the adjutant-general is on extended active duty with the United States military service or is receiving pay as a civilian employee of the federal government; provided that if, by reason of the call or draft of officers of the Montana national guard into the federal service, there are no officers of the national guard possessing the requisite qualifications as set forth above for appointment, then any officer of the national guard may be appointed as acting adjutant-general.

The adjutant-general shall establish, within the state headquarters of the Montana national guard, separate departments for the army national guard and the air national guard. Each department shall have a brigadier general at its head, who will be referred to as assistant adjutant-general for Montana army national guard and assistant adjutant-general for Montana air national guard. The assistant adjutants-general shall be appointed by the adjutant-general with the approval of the governor. One shall be selected from the active list of the Montana army national guard and the other from the active list of the Montana air national guard, and each must have the qualifications set forth above for appointment as adjutant-general. They shall perform such duties as are prescribed by the adjutant-general.

History: En. Sec. 23, Ch. 191, L. 1919; re-en. Sec. 1346, R. C. M. 1921; amd. Sec. 1, Ch. 21, L. 1949; amd. Sec. 1, Ch. 26, L. 1955; amd. Sec. 1, Ch. 272, L. 1959; amd. Sec. 1, Ch. 74, L. 1963.

Amendments

The 1959 amendment substituted "major general" for "brigadier general, provided, however, that he shall, upon the completion of five years service in such rank, have the rank of major general"; substituted the word "for" the first time it appears in the second sentence for the words "at the pleasure of the governor, and his commission shall expire with"; added the words "and until his successor shall have been appointed" and added the 3rd, 4th and 6th sentences in this section.

The 1963 amendment substituted the second paragraph for sentences reading: "There shall be an assistant adjutant-general of the state of Montana, who shall be appointed by the adjutant-general, with

the approval of the governor. He shall be commissioned in the Montana national guard with rank not lower than that of captain. He shall assist the adjutant-general in the performance of his statutory duties, and, during the incapacity or absence from the state of the adjutant-general, shall act in his stead."

Repealing Clauses

Section 2 of Ch. 272, Laws 1959 read "Subsection twelve and subsection thirteen of section 77-120, Revised Codes of Montana, 1947, Replacement Volume 5, in conflict herewith are hereby repealed."

Section 3 of Ch. 272, Laws 1959 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 2 of Ch. 74, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 26, 1963.

77-120. (1349) Duties of adjutant-general—salary.

The introductory paragraphs and subds. (1) to (11). * * * [Same as parent volume.]

(12) and (13). [Repealed.]

Repeal of Subsections 12 and 13

Subsections 12 and 13 of this section (Subsec. 12: En. Sec. 1, Ch. 118, L. 1947; re-en. Sec. 1, Ch. 20, L. 1949; subsec. 13: Sec. 2, Ch. 118, L. 1947 as

added Sec. 1, Ch. 20, L. 1949), relating to the annual salary of the adjutant-general and the assistant adjutant-general were repealed by Sec. 2, Ch. 272, Laws 1959.

77-151. (1373) Claims against national guard appropriation. All bills, claims, and demands against the national guard appropriation shall be certified or verified in the manner prescribed by regulations promulgated by the governor, and shall be audited and approved by the adjutant-general and, if allowed, shall be paid from the national guard appropriation; provided, however, that in all cases where the organized militia or any part thereof is called into the service of the state in case of war, riot, insurrection, invasion, breach of the peace, disaster, or in aid of the civil authorities, warrants for allowed pay and expenses for such service shall be drawn upon the general fund of the state treasury and paid out of any moneys in said fund, on the order of the governor.

History: En. Sec. 45, Ch. 191, L. 1919; re-en. Sec. 1373, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1949; amd. Sec. 27, Ch. 97, L. 1961.

Amendment

The 1961 amendment after the words

"if allowed," deleted the words "by the state board of examiners," and after the words "shall be paid" deleted the phrase "by the state treasurer upon the warrant of the state auditor."

CHAPTER 4—GENERAL PROVISIONS

Section 77-417. Acceptance of National Defense Facilities Act of 1950—controller authorized to enter into contracts for and on behalf of state.
 77-419. Power to receive grants, donations, and gifts.

77-417. Acceptance of National Defense Facilities Act of 1950—controller authorized to enter into contracts for and on behalf of state. For and on behalf of the state of Montana, and in conformity with the requirements and provisions of that certain act of Congress approved September 11, 1950, known as the "National Defense Facilities Act," and entitled "An act to provide for the acquisition, construction, expansion, rehabilitation, conversion, and joint utilization of facilities necessary for the administration and training of the reserve components of the armed forces of the United States," and for other purposes, which act is also known as "The National Defense Facilities Act of 1950, Public Law 783, Congress of the United States of America," and amendments and/or extensions thereof as may hereafter be made, is hereby assented to. The state controller is hereby authorized to, for, and on behalf of the state of Montana, to enter into all contracts and agreements with the United States government, or any office, department, or bureau thereof, relative to the location, acquisition, construction, expansion, rehabilitation, or conversion of facilities necessary for the administration and training of the Montana national guard, its units, its components, or any organization affiliated therewith, and other purposes in connection therewith, in order to comply with requirements and provisions of said act of Congress; and the state controller for and on behalf of the state of Montana is hereby authorized to do all things necessary, or required, to carry out fully the cooperation contemplated by said act of Congress and hereby assented to relative to the location, acquisition, construction, expansion, rehabilitation, conversion, and joint utilization of facilities necessary for the administration and training of the Montana national guard, its units, its components, or any organization affiliated therewith.

History: En. Sec. 3, Ch. 168, L. 1955;
 amd. Sec. 25, Ch. 271, L. 1963.

Amendment

The 1963 amendment substituted "state controller" for "adjutant-general of the state of Montana" and "adjutant-general."

77-419. Power to receive grants, donations, and gifts. The state controller on behalf of the state of Montana is hereby authorized to receive grants, donations, and gifts of any property on behalf of the state of Montana for the purpose of complying with the aforesaid act of Congress, and any property acquired by the state of Montana, as aforesaid, because of said act of Congress, shall remain in the people of the state of Montana.

History: En. Sec. 5, Ch. 168, L. 1955;
 amd. Sec. 26, Ch. 271, L. 1963.

Amendment

The 1963 amendment substituted "The state controller" for "The adjutant-general" at the beginning of the section; and deleted from the end of the section clauses

reading, "and the adjutant-general of the state of Montana is hereby empowered to act as 'contracting officer' for the state of Montana under this act; provided that all contracts let under this act, and the said act of Congress, shall be subject to the approval of the state board of examiners of the state of Montana."

CHAPTER 9—VETERANS' FREE TUITION AT UNIVERSITY OF MONTANA

- Section 77-909. War orphans' attendance to be without fees.
 77-910. Board of education to determine eligibility.
 77-911. Supervision of attendance and charges.

77-905 to 77-908. Repealed.**Repeal**

These sections (Secs. 1 to 4, Ch. 201, L. 1955), relating to war orphans' educa-

tional fund concerning purpose, eligibility, attendance and amount of payment, was repealed by Sec. 4, Ch. 141, Laws 1957.

77-909. War orphans' attendance to be without fees. There shall be established under this act the authority of the state board of education to waive, the charges for the matriculation, tuition, any and all educational fees, for such children of members of the armed forces of the United States who served on active duty during World War II and/or the Korean conflict and who, at the time of entry into such service, had legal residence in this state and who were heretofore, or shall hereafter be, either killed in action or shall have died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States, as are now attending or may hereafter attend any of the units of the greater university of Montana, provided any such child shall enter such institution prior to attaining the age of twenty-one (21) years.

History: En. Sec. 1, Ch. 141, L. 1957.

Title of Act

An act to provide educational opportunities in the units of the greater university of Montana for the children of members of the armed forces of the United States killed while in the armed services

of the United States or dying as a result of a disability or disease incurred while in said services during World War II and/or the Korean conflict; repealing Chapter 201, Laws of 1955; providing for the waiver of fees; repealing all acts and parts of acts in conflict herewith.

77-910. Board of education to determine eligibility. The state board of education shall determine the eligibility of any such child who shall make application for the benefits provided for in this act, and a finding by the United States veterans' administration that any such member was killed in action or died as the result of injury or other disability incurred in action shall be binding upon said board, but in the absence of such finding said board of education shall determine the facts.

History: En. Sec. 2, Ch. 141, L. 1957.

77-911. Supervision of attendance and charges. The state board of education shall satisfy itself of the attendance of any such child at any such institution.

History: En. Sec. 3, Ch. 141, L. 1957.

chapter 201 of the Laws of 1955, and all acts and parts of acts in conflict therewith.

Repealing Clause

Section 4 of Ch. 141, Laws 1957 repealed

CHAPTER 10—VETERANS' WELFARE COMMISSION

77-1003. Repealed.**Repeal**

This section (Sec. 3, Ch. 111, L. 1945),

relating to the veterans' welfare fund, was repealed by Sec. 14, Ch. 80, Laws 1961.

TITLE 78—STATE CAPITOL

- Chapter 1. Custodian of state capitol, Repealed—Section 33, Chapter 271, Laws of 1963.
2. Montana veterans and pioneers building—adjunct to state capitol building, 78-202.
 3. Veterans' memorial moneys, 78-302.
 4. Declaration of policy as to state works—employment of architect to plan capitol addition—bond issue, Repealed—Section 242, Chapter 147, Laws of 1963; Section 33, Chapter 271, Laws of 1963.
 5. Capitol building land grant, 78-501, 78-503.
 6. State laboratory building bonds, Repealed—Section 242, Chapter 147, Laws of 1963; Section 33, Chapter 271, Laws of 1963.
 7. State capitol repair and reconstruction, 78-737 to 78-746.
 8. Governor's quarters, Repealed—Section 242, Chapter 147, Laws of 1963; Section 33, Chapter 271, Laws of 1963.
 9. Future building needs, Repealed—Section 33, Chapter 271, Laws of 1963.
 10. Unemployment compensation commission building, 78-1001 to 78-1010.
 11. Insurance on state buildings, 78-1101.

CHAPTER 1—CUSTODIAN OF STATE CAPITOL

(Repealed—Section 33, Chapter 271, Laws of 1963)

78-101 to 78-109. (310 to 315, 317 to 319) Repealed.

Repeal

These sections (Secs. 1 to 3, Ch. 157, L. 1907; Secs. 1 to 6, Ch. 46, L. 1917; Sec. 3,

Ch. 225, L. 1963), relating to the custodian of the state capitol, were repealed by Sec. 33, Ch. 271, Laws 1963.

CHAPTER 2—MONTANA VETERANS AND PIONEERS BUILDING— ADJUNCT TO STATE CAPITOL BUILDING

Section 78-202. Purpose and use of building.

78-201. Repealed.

Repeal

This section (Sec. 1, Ch. 204, L. 1945), relating to construction of the veterans

and pioneers memorial building, was repealed by Sec. 33, Ch. 271, Laws 1963.

78-202. Purpose and use of building. "The Veterans and Pioneers Memorial Building" shall constitute a perpetual memorial to the war veterans and the pioneers of Montana, and said building shall be devoted to the use of the United Spanish War Veterans of Montana, the Veterans of Foreign Wars of Montana, the American Legion of Montana, the Disabled American Veterans of Montana, the World War I Veterans of Montana, the historical society of Montana, the society of Montana pioneers, and the sons and daughters of Montana pioneers, and for the housing of books, records, documents, and other property of such veterans and organizations; and there shall be provided in said building appropriate office quarters for the state headquarters and officers and employees of such veterans and organizations, and for the librarian and other employees of the historical society of Montana.

History: En. Sec. 2, Ch. 204, L. 1945; amd. Sec. 1, Ch. 54, L. 1961; amd. Sec. 27, Ch. 271, L. 1963.

Amendments

The 1961 amendment inserted "the World War I Veterans of Montana."

The 1963 amendment substituted "The Veterans and Pioneers Memorial Building" at the beginning of the section for "Said building"; deleted "when completed" before "said building shall be devoted"; and substituted "the United Spanish War Veterans of Montana, the Veterans of Foreign Wars of Montana, the American Legion of Montana, the Disabled Ameri-

can Veterans of Montana" for "the war veterans organizations set forth in sections 78-301 to 78-305."

Repealing Clause

Section 2 of Ch. 54, Laws 1961 repealed all acts and parts of acts in conflict therewith.

78-203 to 78-208. Repealed.

Repeal

These sections (Secs. 3 to 8, Ch. 204, L. 1945; Sec. 1, Ch. 205, L. 1949), relating to construction of the veterans and pioneers

memorial building and to the bond issue for the financing thereof, were repealed by Sec. 242, Ch. 147, Laws 1963, and by Sec. 33, Ch. 271, Laws 1963.

78-210, 78-211. Repealed.

Repeal

These sections (Secs. 10, 11, Ch. 204, L. 1945), relating to construction of the vet-

erans and pioneers memorial building, were repealed by Sec. 33, Ch. 271, L. 1963.

CHAPTER 3—VETERANS' MEMORIAL MONEYS

Section 78-302. Expenditure of veterans' memorial moneys.

78-301. Repealed.

Repeal

This section (Sec. 1, Ch. 131, L. 1939), creating the veterans' memorial fund com-

mission, was repealed by Sec. 33, Ch. 271, Laws 1963.

78-302. Expenditure of veterans' memorial moneys. The moneys deposited in the earmarked revenue fund as required by section 82-308 may be expended only for the construction, maintenance, furniture, dioramas, displays, works of art and workmanship for the veterans' quarters of the veterans'-pioneers' memorial building. The veterans' organizations occupying the veterans' quarters of the veterans and pioneers memorial building, before July 1 of each year preceding a legislative session, shall submit a budget to the state controller for expenditures [from the veterans' memorial fund] for the next biennium. The controller shall include in the department of administration budget, a request for an appropriation [from the veterans' and pioneers' memorial fund] for the purposes mentioned above.

History: En. Sec. 2, Ch. 131, L. 1939; amd. Sec. 1, Ch. 121, L. 1955; amd. Sec. 163, Ch. 147, L. 1963; amd. Sec. 28, Ch. 271, L. 1963.

has placed brackets around the language that may now be obsolete.

Amendments

Chapter 147, Laws 1963, substituted "The moneys deposited in the earmarked revenue fund as required by section 82-308 are" at the beginning of the section for "The veterans' memorial fund heretofore created shall be placed"; and substituted "expend such moneys" in the first sentence for "expend said fund and the accruals thereto."

Chapter 271, Laws 1963, substituted "may be expended only" near the beginning of the section for "heretofore created shall be placed under the exclusive control and jurisdiction of said commission which

Compiler's Note

This section was amended twice in 1963, once by Ch. 147 and once by Ch. 271. Neither amendatory act mentioned nor included the changes made by the other. The only apparent conflict between the two amendments is that certain language in the sentences added by Ch. 271 (see amendment note below) may be obsolete in view of changes made by Ch. 147 in this and other sections. The compiler has made a composite section incorporating the changes made by both sections, and

is empowered to expend said fund and the accruals thereto"; deleted from the end of the first sentence the words "and the

necessary expenses of the commission"; and added the second and third sentences.

78-303 to 78-308. (4562.1 to 4562.3) Repealed.

Repeal

These sections (Sec. 12, Ch. 103, L. 1927; Secs. 1, 2, Ch. 60, L. 1929; Secs. 3 to 5, Ch. 131, L. 1939), relating to construction of the veterans' memorial build-

ing, and to the veterans' memorial fund, were repealed by Sec. 33, Ch. 271, Laws 1963. Sections 78-305 to 78-308 were also repealed by Sec. 242, Ch. 147, Laws 1963.

CHAPTER 4—DECLARATION OF POLICY AS TO STATE WORKS— EMPLOYMENT OF ARCHITECT TO PLAN CAPITOL ADDITION—BOND ISSUE

(Repealed—Section 242, Chapter 147, Laws of 1963; Section 33, Chapter 271, Laws of 1963)

78-401 to 78-416. Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 2, L. 1945; Secs. 1 to 10, Ch. 59, L. 1947; Secs. 1, 2, Ch. 68, L. 1947), relating to plans and

a bond issue for an addition to the state capitol, were repealed by Sec. 242, Ch. 147, Laws 1963, and by Sec. 33, Ch. 271, Laws 1963.

CHAPTER 5—CAPITOL BUILDING LAND GRANT

Section 78-501. Disposal of revenue.
78-503. Dedication of funds.

78-501. Disposal of revenue. The state treasurer is hereby authorized and instructed to deposit in the federal and private revenue fund all revenue from the capitol building land grant.

History: En. Sec. 1, Ch. 120, L. 1943; amd. Sec. 49, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "deposit in the federal and private revenue fund" for "set aside in a fund, to be known as the 'capitol building fund'"; and de-

leted from the end of the section the words "from and after the time that sufficient funds have been accumulated to meet the principal and interest on the refunding of the capitol building bonds as authorized in Chapter 133, Session Laws of 1939."

78-502. Repealed.

Repeal

This section (Sec. 2, Ch. 120, L. 1943), relating to transfer of certain funds to the

capitol building fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

78-503. Dedication of funds. The funds so accumulated shall be held and dedicated for the purpose of constructing capitol buildings or additions, thereto, in accordance with the provisions of section 12 of the enabling act.

History: En. Sec. 3, Ch. 120, L. 1943; amd. Sec. 50, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "in said capitol building fund" after "accumulated."

CHAPTER 6—STATE LABORATORY BUILDING BONDS

(Repealed—Section 242, Chapter 147, Laws of 1963;

Section 33, Chapter 271, Laws of 1963)

78-601 to 78-620. Repealed.**Repeal**

These sections (Secs. 1 to 8, 10, Ch. 258, L. 1947; Secs. 1 to 9, Ch. 166, L. 1953; Secs. 1, 2, Ch. 227, L. 1955), relating to

state laboratory building bonds, were repealed by Sec. 242, Ch. 147, Laws 1963, and by Sec. 33, Ch. 271, Laws 1963.

CHAPTER 7—STATE CAPITOL REPAIR AND RECONSTRUCTION

Section 78-737. Improvement and repair of state capitol—borrowing of state funds authorized.

78-738. Employment of architects and engineers.

78-739. Bids and contracts—contractors' bonds.

78-740. Maximum borrowing power.

78-741. Terms of bonds, indentures, and notes.

78-742. Sale of bonds, indentures, and notes—registration and accounts.

78-743. Funds available for repayment of obligations.

78-744. Moneys deposited in sinking fund.

78-745. Budget act inapplicable.

78-746. Consultation as to legislative areas.

78-701 to 78-736. Repealed.**Repeal**

These sections (Secs. 1 to 9, Ch. 7, L. 1953; Secs. 1 to 9, Ch. 2, L. 1955; Secs. 1 to 9, Ch. 278, L. 1955; Secs. 1 to 9, Ch.

248, L. 1957), relating to state capitol repair and reconstruction, were repealed by Sec. 242, Ch. 147, Laws 1963, and by Sec. 33, Ch. 271, Laws 1963.

78-737. Improvement and repair of state capitol—borrowing of state funds authorized. In order to provide for the reconstruction, improvement, remodeling, repair and furnishing of the state capitol building of the state of Montana at Helena, Montana, the state board of examiners of the state of Montana is authorized to borrow sums of money from time to time from the unpledged investment funds available to any state agency or division of government, and to issue bonds, indentures or notes therefor.

History: En. Sec. 1, Ch. 257, L. 1963.

Title of Act

An act authorizing the state board of examiners to borrow up to one million dollars (\$1,000,000) for the reconstruction, improvement, remodeling, repair, and furnishing of the state capitol building of the state of Montana at Helena, Montana;

providing for the issuance of bonds, indentures and/or notes; dedicating income from capitol building land grant for repayment of loans; enumerating the power and duties of the state board of examiners in carrying out the provisions of this act; and providing for an effective date and a severability clause.

78-738. Employment of architects and engineers. The state board of examiners is hereby authorized, directed and empowered to employ an architect or architects, an engineer or engineers for such period of time as it may deem proper for the purpose of making the necessary studies and preparing complete plans and specifications; and to proceed with the reconstruction, improvement, remodeling, repair and furnishing of the state capitol building without delay.

History: En. Sec. 2, Ch. 257, L. 1963.

78-739. Bids and contracts—contractors' bonds. The state board of examiners shall call for bids for the reconstruction, improvement, remodel-

ing, repair, and furnishing of the state capitol building and let contracts for the same, all in accordance with the laws of the state of Montana. Said board shall require the contractors to give bonds to the state of Montana in such amounts as the board may determine, conditioned for the faithful performance of their duties and contracts.

History: En. Sec. 3, Ch. 257, L. 1963.

78-740. Maximum borrowing power. The aggregate amount which the state board of examiners is authorized to borrow under this act for the purposes herein expressed shall not be in excess of the sum of one million dollars (\$1,000,000).

History: En. Sec. 4, Ch. 257, L. 1963.

78-741. Terms of bonds, indentures, and notes. The bonds, indentures and/or notes issued by the state board of examiners under authority of this act shall not bear interest at a rate in excess of four per cent (4%) per annum payable semiannually. They shall bear such date as the state board of examiners shall prescribe, and shall be payable over such period of years, not exceeding fifteen (15), as said board may specify. All bonds, indentures and/or notes shall be optional and redeemable at any time after the date of issue, at the option of the state board of examiners. Said bonds, indentures and/or notes shall be in such denominations and sums and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer of the state of Montana. Coupons attached to any such bonds may bear the facsimile signature of the members of said board.

History: En. Sec. 5, Ch. 257, L. 1963.

78-742. Sale of bonds, indentures, and notes—registration and accounts. Said bonds, indentures and/or notes shall be sold by the state board of examiners at such time and in such manner as the board shall deem best to carry out the provisions of this act; provided that none of such bonds shall be sold for less than par, plus accrued interest to the date of delivery of the bonds. Each of said bonds, indentures and/or notes shall be registered before delivery with the state treasurer of the state of Montana, who shall keep accurate accounts of payments of interest and principal upon said bonds, indentures and/or notes.

History: En. Sec. 6, Ch. 257, L. 1963.

78-743. Funds available for repayment of obligations. The principal and interest of the bonds, indentures and/or notes authorized by this act shall be payable out of the following fund and from it only: As much as may be necessary from the income received from the capitol building land grant shall be, and the same is hereby dedicated and appropriated for the repayment of the principal and interest of the bonds, indentures and/or notes provided for by this act.

History: En. Sec. 7, Ch. 257, L. 1963.

DECISIONS UNDER FORMER LAW

Use of Capitol Land Grant Funds

Capitol land grant funds may be used to repair, renovate or construct an old building and install a roll call voting ma-

chine in the chambers of the house of representatives, as such use is contemplated by section 12 of the Enabling Act, as it existed prior to amendment. State ex rel. Morgan v. Board of Examiners, 131 M 188, 309 P 2d 336, specifically overruling Bryant v. Board of Examiners, 130 M 512, 305 P 2d 340. (Dissenting opinion, 131 M 188, 309 P 2d 336, 341.)

Section 12 of the Enabling Act (as it existed prior to amendment in 1957), which authorized the use of land grant

funds for erection or construction of buildings for executive, legislative, and judicial purposes, confers implied authority to keep the building in a proper state of repair so as to serve the purpose intended. State ex rel. Morgan v. Board of Examiners, 131 M 188, 309 P 2d 336, specifically overruling Bryant v. Board of Examiners, 130 M 512, 305 P 2d 340. (Dissenting opinion, 131 M 188, 309 P 2d 336, 341.)

78-744. Moneys deposited in sinking fund. To provide for the payment of the interest and principal of the bonds, indentures and/or notes authorized by this act, all the sums of money hereinbefore dedicated and appropriated to the payment of the principal and interest of said bonds, indentures and/or notes and the reconstruction, improvement, remodeling, repair and furnishing of said capitol building shall be paid and deposited in the sinking fund in the state treasury.

History: En. Sec. 8, Ch. 257, L. 1963.

78-745. Budget act inapplicable. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the budget act.

History: En. Sec. 9, Ch. 257, L. 1963.

78-746. Consultation as to legislative areas. The state board of examiners shall consult with the members of the legislative council as to plans for remodeling the legislative areas of the building.

History: En. Sec. 10, Ch. 257, L. 1963.

Separability Clause

Section 11 of Ch. 257, Laws 1963 read "Every section of this act and every part of each section is hereby declared to be independent of each other, and the holding of any section or part hereof to be void or ineffective for any cause shall not

be deemed to affect any other section or part hereof."

Effective Date

Section 12 of Ch. 257, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 11, 1963.

CHAPTER 8—GOVERNOR'S QUARTERS

(Repealed—Section 242, Chapter 147, Laws of 1963;
Section 33, Chapter 271, Laws of 1963)

78-801 to 78-818. Repealed.

Repeal

These sections (Secs. 1 to 9, Ch. 77, L. 1953; Secs. 1 to 9, Ch. 277, L. 1955), re-

lating to the governor's quarters, were repealed by Sec. 242, Ch. 147, Laws 1963, and by Sec. 33, Ch. 271, Laws 1963.

CHAPTER 9—FUTURE BUILDING NEEDS

(Repealed—Section 33, Chapter 271, Laws of 1963)

78-901 to 78-909. Repealed.

Repeal

These sections (Secs. 1 to 9, Ch. 279, L. 1955), relating to future building needs,

were repealed by Sec. 33, Ch. 271, L. 1963. Section 78-908 was also repealed by Sec. 242, Ch. 147, L. 1963.

CHAPTER 10—UNEMPLOYMENT COMPENSATION COMMISSION BUILDING

- Section 78-1001.** Bond issue authorized for erection of unemployment compensation commission building.
- 78-1002. Architect—employment—construction and design.
- 78-1003. Bids—contractor's bond.
- 78-1004. Amount of bonds authorized.
- 78-1005. Interest rate—term—other provisions of bonds.
- 78-1006. Sale of bonds—registration.
- 78-1007. Payment of principal and interest.
- 78-1008. Unemployment compensation commission building interest and sinking fund.
- 78-1009. Purchase of bonds by board of land commissioners.
- 78-1010. Budget act not applicable.

78-1001. Bond issue authorized for erection of unemployment compensation commission building. The state board of examiners of the state of Montana is hereby authorized to issue and sell bonds for the purpose of erecting an unemployment compensation commission building as an adjunct to the state capitol building at Helena, Montana, and for the purpose of landscaping and paving around said building, said building to be erected upon a site upon the present capitol building grounds, adjacent to the capitol buildings, namely lots 9 through 24, inclusive, in block 20 of the Corbin Addition to the City of Helena, County of Lewis and Clark, Helena, Montana.

History: En. Sec. 1, Ch. 196, L. 1959.

Title of Act

An act to provide for the issue and sale by the state board of examiners of bonds for the purpose of erecting an unemployment compensation commission building as an adjunct to the state capitol building; designating the funds from which said bonds shall be paid; providing for an

unemployment compensation commission building interest and sinking fund; enumerating the powers and duties of the state board of examiners in carrying out the provisions of this act; authorizing the state board of land commissioners to purchase said bonds with moneys from the long term investment fund; providing a savings clause; and providing an effective date.

78-1002. Architect — employment — construction and design. Upon the sale of the bonds, the state board of examiners is hereby empowered and directed to employ an architect to prepare plans and specifications, and to proceed with the erection of a building of suitable construction and design for use as an unemployment compensation commission building within the limitations prescribed by the United States bureau of employment security and the United States secretary of labor.

History: En. Sec. 2, Ch. 196, L. 1959.

78-1003. Bids—contractor's bond. The state board of examiners shall call for bids for the construction of said building and for the landscaping and paving around it, and let contracts for the same, all in accordance with the laws of the state of Montana. Said board shall require the contractor to give bond to the state of Montana in such amount as the board may determine, conditioned for the faithful performance of his duties and contracts.

History: En. Sec. 3, Ch. 196, L. 1959.

78-1004. Amount of bonds authorized. The aggregate amount of bonds authorized by this act for the purpose herein expressed shall not exceed the sum of six hundred thousand dollars (\$600,000).

History: En. Sec. 4, Ch. 196, L. 1959.

78-1005. Interest rate—term—other provisions of bonds. Bonds issued and sold by the state board of examiners under authority of this act shall bear interest at a rate not exceeding five per cent (5%) per annum, payable semi-annually. They shall be either amortization or serial bonds, shall bear such date as the state board of examiners shall prescribe, and shall be payable over such period of years, not exceeding twenty (20), as said board may specify. All bonds shall be optional and redeemable five (5) years after the date of issue and on any interest payment date thereafter, at the option of the state board of examiners. Said bonds shall be in such denominations and sums and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer of the state of Montana. The coupons attached to said bonds may bear the facsimile signature of the members of said board.

History: En. Sec. 5, Ch. 196, L. 1959.

78-1006. Sale of bonds—registration. Said bonds shall be sold by the state board of examiners at such time, in such manner, and in such amounts as the board shall deem best to carry out the provisions of this act; provided that none of such bonds shall be sold for less than par, plus accrued interest to the date of delivery of the bonds. Each of said bonds shall be registered before delivery with the state treasurer of the state of Montana, who shall keep accurate accounts of payments of interest and principal upon said bonds.

History: En. Sec. 6, Ch. 196, L. 1959.

78-1007. Payment of principal and interest. The principal and interest of the bonds authorized by this act shall be payable out of the following funds and from them only: All money credited to this state's account in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the social security act, as amended, and all money received from the United States secretary of labor and authorized for payment to provide office space for the central offices of the unemployment compensation commission at Helena, Montana, immediately following occupancy of said building upon completion of erection, pursuant to title III of the social security act, as amended, shall be, and the same is hereby perpetually dedicated and appropriated for the payment of the principal and interest of the bonds provided for by this act to the extent said money may be sufficient to pay the same; provided said bonds shall be issued and sold by said state board of examiners as herein provided only for the total sum or amount necessary to be raised in excess of such total of all balances or sums that may be accrued and

available from said sources for erection of said building a total of six hundred thousand dollars (\$600,000).

History: En. Sec. 7, Ch. 196, L. 1959. as amended, referred to in this section, appears in United States Code, Title 42, sec. 903. Title III appears as Title 42, secs. 501 to 503.

Compiler's Note

Section 903 of the social security act,

78-1008. Unemployment compensation commission building interest and sinking fund. To provide for the payment of the interest and principal of the bonds authorized by this act, there is hereby created a special fund to be known as the unemployment compensation commission building interest and sinking fund, into which fund shall be paid all the sums of money hereinbefore dedicated and appropriated to the payment of the principal and interest of said bonds and the erection of said building including the landscaping and paving around it.

History: En. Sec. 8, Ch. 196, L. 1959.

78-1009. Purchase of bonds by board of land commissioners. The state board of land commissioners is hereby authorized to purchase the bonds provided for by this act with moneys from the long term investment fund notwithstanding the provisions of sections 81-1001 and 81-1006 of the Revised Codes of Montana, 1947.

History: En. Sec. 9, Ch. 196, L. 1959.

78-1010. Budget act not applicable. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the budget act.

History: En. Sec. 10, Ch. 196, L. 1959.

Separability Clause

Section 11 of Ch. 196, Laws 1959 read "Every section of this act and every part of each section is hereby declared to be independent of each other, and the holding of any section or part hereof to be void or ineffective for any cause shall not

be deemed to affect any other section or part hereof."

Effective Date

Section 12 of Ch. 196, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 10, 1959.

CHAPTER 11—INSURANCE ON STATE BUILDINGS

Section 78-1101. Insurance on state buildings—use of proceeds.

78-1101. Insurance on state buildings—use of proceeds. (1) Moneys received by the state as indemnification for damage to state buildings, except buildings procured by the state highway commission by purchase or condemnation for right-of-way purposes, shall be deposited in the bond proceeds and insurance clearance fund. These moneys may only be:

- (a) Used to repair the damaged property, or
- (b) Used to replace the damaged property, subject to the limitations in subsection (2) of this section, or
- (c) Transferred to the fund and account from which the premiums were paid on the policy covering the building. Moneys transferred in this manner may not be spent by the institution or agency having custody of

the damaged property, but shall be available for future legislative appropriation. If the moneys are not spent or committed within two (2) years from the time they are received, they shall automatically revert to the fund and account from which the premiums were paid.

(2) If an insured building is totally destroyed or so badly damaged that repair is impractical, the governing board or officer responsible for the building may authorize any moneys received by the state as indemnification for property damage to be used to replace the building only if the proposed replacement is designed to be used for the same general purposes as the damaged or destroyed building. If the governing board or officer determines that the building should not be replaced, any moneys received by the state as indemnification for property damage over and above any outstanding debt on the building shall be transferred as provided in subparagraph (c) of subsection (1) of this section.

History: En. Sec. 1, Ch. 110, L. 1963.

Title of Act

An act providing that moneys received by the state as indemnification for damage to state buildings may only be used

to repair the damaged property, to replace the damaged property, or be transferred to the fund and account from which premiums were paid on the insurance policy, and providing exceptions.

TITLE 79—STATE FINANCE

- Chapter 1. General fiscal duties of state auditor, 79-104.
2. General fiscal duties of state treasurer, 79-201, 79-202.
3. State depository board—deposit and investment of state funds, 79-301, 79-304, 79-306.
4. Treasury fund structure, 79-409 to 79-416.
5. State horticultural revolving fund—revolving funds of department of agriculture, Repealed—Section 242, Chapter 147, Laws of 1963.
6. Perpetual appropriations for support of state institutions—contingent revolving accounts, 79-601 to 79-603.
8. Miscellaneous powers and duties of state treasurer—suspension, 79-813.
9. Expenditures by state departments in excess of income prohibited, 79-901, 79-904.
10. State budget act, 79-1011 to 79-1019.
12. Montana trust and legacy fund—unified investment plan, 79-1202, 79-1203, 79-1206, 79-1208, 79-1211 to 79-1214.
13. Post war planning and construction reserve fund, Repealed—Section 1, Chapter 55, Laws of 1959.
14. Investment income of state institutions, 79-1401 to 79-1403.
18. General refunding act applicable to all outstanding bonds, 79-1802.
19. Revenue bond refinancing act of 1937, 79-1905.
20. Bond validating act, 79-2001 to 79-2004.
21. Flood control funds—disposal, 79-2101, 79-2102.

CHAPTER 1—GENERAL FISCAL DUTIES OF STATE AUDITOR

Section 79-104. Order in which warrants must be drawn.

79-103. (153) Repealed.

Repeal

This section (Sec. 422, Pol. C. 1895), relating to the school fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

79-104. (154) Order in which warrants must be drawn. All warrants for claims which have been audited by the state controller and filed in his office must be drawn in the order in which they are transmitted to him by the controller.

History: En. Sec. 423, Pol. C. 1895; re-en. Sec. 173, Rev. C. 1907; re-en. Sec. 154, R. C. M. 1921; amd. Sec. 5, Ch. 97, L. 1961. Cal. Pol. C. Sec. 436.

controller" for "board of examiners" and, at the end of the section, substituted "order in which they are transmitted to him by the controller" for "order of the numbers placed upon them by that board."

Amendment

The 1961 amendment substituted "state

CHAPTER 2—GENERAL FISCAL DUTIES OF STATE TREASURER

Section 79-201. State treasurer—general fiscal duties.

79-202. State moneys, how expended by treasurer.

79-201. (174) State treasurer—general fiscal duties. It is the duty of the state treasurer:

1. To receive and keep all moneys belonging to the state, and not required to be received and kept by some other person.

2. To file and keep the certificates of the state auditor delivered to him when moneys are paid into the treasury.

3. To deliver to each person paying money into the treasury and to the state auditor and state controller a duplicate receipt showing the

amount, the sources from which the money accrued, and the funds and accounts into which it is paid, which receipts must be numbered in order, beginning with number one at the commencement of each fiscal year.

4. To pay warrants out of the funds upon and in the order in which they are drawn.

5. Upon payment of any warrant, to take upon the back thereof the receipt of the person to whom it is paid, and file and preserve the same.

6. To keep an account of all moneys received and disbursed.

7. To keep separate accounts of the different funds.

8. To report to the state controller, on the last day of each month, the amount disbursed for the redemption of bonds and in payment of warrants during the month; which report must show the funds out of which they were paid, and the balance of cash on hand in the treasury to the credit of each fund.

9 to 12. * * * [Same as parent volume.] ✓

History: En. Sec. 440, Pol. C. 1895; re-en. Sec. 179, Rev. C. 1907; re-en. Sec. 174, R. C. M. 1921; amd. Sec. 8, Ch. 147, L. 1963. Cal. Pol. C. Sec. 452.

Amendment

The 1963 amendment inserted "and state controller" after "state auditor" in

paragraph 3; inserted "and accounts" after "the funds" in paragraph 3; deleted "drawn by the state auditor" after "warrants" in paragraph 4; substituted "state controller" for "state auditor" in paragraph 8; and deleted "the date and number of such bonds and warrants" after "report must show" in paragraph 8.

79-202. (193) State moneys, how expended by treasurer. No moneys received by the state treasurer shall be paid out by him except upon state warrant issued by the state auditor, and the state auditor shall not issue his warrant upon the state treasurer save by virtue of unexhausted appropriation therefor made by the legislative assembly, and after the presentation to him of a claim duly approved by the state controller, save and except for salaries and compensation of officers fixed by law; provided, however, that nothing in this act contained shall require an appropriation by the legislature for the administering of any specific trust funds administered by any state board, commission or department.

History: En. Sec. 2, Ch. 112, L. 1921; re-en. Sec. 193, R. C. M. 1921; amd. Sec. 6, Ch. 97, L. 1961.

Amendment

The 1961 amendment substituted the

words "the state controller" for "the state board of examiners" where they appear after the words "claim duly approved by."

79-207. (179) Repealed.

Repeal

This section (Sec. 441, Pol. C. 1895),

defining the general fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

CHAPTER 3—STATE DEPOSITORY BOARD—DEPOSIT AND INVESTMENT OF STATE FUNDS

Section 79-301. State depository board—funds in the hands of the state treasurer.

79-304. State depository board to invest money in state sinking funds.

79-306. State treasurer as treasurer of state agencies—deposits of moneys.

79-301. (182) State depository board—funds in the hands of the state treasurer. (1) to (4). * * * [Same as parent volume.] ✓

(5) Any bank pledging securities as provided in this act may at any time it deems it advisable or desirable substitute securities for all or any part of the securities pledged. The collateral so substituted shall be approved by the state depository board at its next official meeting. Such securities so substituted shall at the time of substitution be at least equal in principal amount to the securities for which substitution is made. In the event that the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the state treasurer and to the depository bank, a receipt specifically describing and identifying both the securities so substituted and those released and returned to the depository bank.

History: Ap. p. 183, Rev. C. 1907; en. Sec. 1, Ch. 129, L. 1909; re-en. Sec. 182, R. C. M. 1921; amd. Sec. 1, Ch. 85, L. 1923; amd. Sec. 1, Ch. 180, L. 1929; amd. Sec. 1, Ch. 62, L. 1935; amd. Sec. 1, Ch. 35, L. 1963.

Amendment

The 1963 amendment added subsection (5).

79-304. State depository board to invest money in state sinking funds. Whenever there is any money in the sinking fund for any state bonds or other obligations issued by the state of Montana or any agencies thereof, either now existing or hereafter created and established, which is not required for the immediate payment of principal or interest of any state bonds or other obligations issued by the state of Montana or any agencies thereof, or which cannot be used for the payment and redemption of such bonds or obligations outstanding because of the same not being then redeemable under the option provisions contained therein, the state depository board is hereby directed and empowered to cause the same to be invested by the state board of land commissioners as part of the short term investment fund; provided, however, that none of such moneys will be invested in bonds or securities except as will be called in and paid at least fifteen (15) days prior to the time such moneys are required for payment of principal and interest, or the time when such moneys can be used for such purpose because of the optional date provided for in the bonds or obligations having arrived.

History: En. Sec. 1, Ch. 68, L. 1941; amd. Sec. 1, Ch. 101, L. 1945; amd. Sec. 5, Ch. 176, L. 1953; amd. Sec. 10, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the

sinking fund" for "any sinking and interest fund" near the beginning of the section; and deleted "of such outstanding state bonds or obligations to which such sinking and interest fund belongs" after "payment of principal and interest" in the proviso.

79-306. (192) State treasurer as treasurer of state agencies—deposits of moneys. (1) The state treasurer is hereby designated the treasurer of each and every state board, commission, bureau, department and state institution, now existing or hereafter to be created or established. All departments of the state government located at the capitol shall deposit with the state treasurer daily all moneys, credits, evidences of indebtedness and securities received.

(2) All state boards, commissions, bureaus, departments and state institutions not located in the capitol shall deposit daily all moneys, credits,

evidences of indebtedness and securities in banks located in the city or town in which such boards, commissions, bureaus, departments and state institutions are situated, provided there is a qualified bank in such city or town, to be designated by the state treasurer with the approval of the state depository board, or with the state treasurer. Such banks shall furnish indemnifying bonds or pledge securities in amounts sufficient to cover all such deposits at all times, and such deposits shall be made in the name of the state treasurer, and shall be subject to withdrawal at his option, and such deposits shall draw interest as other state moneys. Indemnifying bonds and pledged securities shall be subject to the approval of the state depository board.

History: En. Sec. 1, Ch. 112, L. 1921; re-en. Sec. 192, R. C. M. 1921; amd. Sec. 1, Ch. 157, L. 1931; amd. Sec. 9, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted from the end of subsection (1) clauses reading, "and the state treasurer shall give such

departments credit on their suspense accounts, which the state treasurer is hereby directed to set up, and such deposits shall be subject to the final payment of all items, and the state treasurer is directed to charge back against such suspense accounts all items unpaid for any reason"; and deleted a former subsection (3), for text of which see parent volume.

CHAPTER 4—TREASURY FUND STRUCTURE

- Section 79-409. Title and purpose of act.
 79-410. Fund structure.
 79-411. Previous definitions of funds—future provisions for segregation of moneys.
 79-412. Additional accounts authorized.
 79-413. Creation and abolition of new accounts.
 79-414. Maintenance of fund and account records—accounting procedures.
 79-415. Appropriation and disbursement of moneys from the treasury.
 79-416. Special funds abolished—transfer to general fund.

79-401 to 79-408. (198.1 to 198.8) Repealed.

Repeal

These sections (Secs. 1 to 8, Ch. 110, L. 1923; Sec. 1, Ch. 157, L. 1947), relating to

controlling fund accounts, were repealed by Sec. 242, Ch. 147, Laws 1963.

79-409. Title and purpose of act. This act may be cited as the "Treasury Fund Structure Act." The purpose of this act is to simplify the accounting system and treasury fund structure of the state, to make possible the full utilization of modern accounting methods, to provide the legislative assembly with a greater measure of control over public moneys, and to enable the financial records of the state to accurately reflect governmental costs and revenues.

History: En. Sec. 1, Ch. 147, L. 1963.

Title of Act

An act reorganizing the state treasury fund structure and revising state fiscal procedures for the appropriation, collection, spending and accounting of public and other moneys; amending sections 79-201, 79-306, 79-304, 79-601, 79-603, 79-813, 79-1011, 79-1015, 79-1202, 79-1203, 79-1206, 79-1208, 79-1211, 79-1212, 79-1213, 79-1214, 79-1401, 79-1403, 62-305, 3-233, 3-408, 3-420, 3-510, 3-602, 3-704, 3-904,

3-1709, 3-1715, 3-1717, 3-1906, 3-1910, 3-2004, 3-2007, 3-2207, 3-2302, 3-2315, 3-2503, 3-2803, 44-509, 44-510, 44-514, 78-501, 78-503, 84-1901, 75-3612, 75-3613, 75-3614, 75-3615, 75-3616, 75-3618, 75-3619, 75-3620, 75-3621, 75-3413, 75-2521, 75-3503, 75-3505, 75-4802, 82-3104, 75-5101, 69-3015, 11-1920, 11-1921, 15-2024, 40-2717, 82-1507, 82-1505, 82-1511, 82-1516, 82-1517, 89-116.1, 89-120, 89-402, 93-2011, 93-2014, 93-2015, 93-2020, 44-410, 44-412, 82-503, 46-105, 84-5212, 46-609, 46-704, 46-707, 46-804, 46-806, 46-911, 52-322, 46-1901, 46-1903, 46-1904, 46-1912,

46-1914, 46-1915, 84-5214, 84-2708, 3-2704, 46-904, 46-1006, 46-803, 84-5211, 91-502, 91-504, 91-505, 91-506, 91-507, 91-512, 91-523, 91-526, 66-1237, 69-3404, 66-1307, 66-1311, 66-1314, 66-2333, 66-2104, 66-2106, 66-2203, 66-2204, 66-1008, 66-1009, 66-607, 66-603, 66-608, 66-2503, 66-1527, 66-809, 82-702, 83-709, 66-407, 66-408, 66-108, 66-109, 66-513, 66-2403, 66-2407, 66-1405, 66-1410, 66-904, 66-906, 66-909, 66-919, 66-925, 66-2604, 66-2605, 66-2606, 46-2306, 46-2331, 27-409, 27-417, 26-121, 60-145, 60-147, 82-308, 78-302, 92-116, 92-119, 92-820, 69-1516, 92-840, 92-902, 92-1005, 92-1119, 92-1334, 92-1358, 92-120, 92-1101, 92-1105, 92-1102, 92-1103, 92-1106, 92-1110, 92-1114, 92-1115, 92-1116, 92-1122, 92-1123, 92-1112, 92-1113, 92-1302, 92-1343, 92-1357, 11-2030, 11-2025, 11-2026, 11-2028, 92-709A, 75-2708, 68-405, 59-1103.1, 59-1104, 59-1105, 31-201, 31-205, 31-206, 31-209, 31-210, 87-111, 87-

112, 87-133, 84-5621, 71-901, 4-229, 32-1619, 84-1840, 84-1802, 28-111, 81-1410, 28-123, 28-124, 81-1601, 1-501, 84-1819, 5-910, 75-3701, 81-1001, 81-1005, 75-1315, 19-121, 53-122, 94-35-152.13, 80-720, 38-210, 80-322, 66-1812, 28-304, 75-706, 75-807, 75-811, 75-723, 89-401, 27-313, R. C. M. 1947; and repealing sections 79-103, 79-207, 79-401 through 79-408, 79-1008, 79-1204, 79-1205, 79-1210, 79-501 through 79-505, 3-203, 78-203 through 78-208, 78-401 through 78-416, 78-502, 78-601 through 78-620, 78-701, through 78-727, 78-728 through 78-736 enacted as sections 1 through 9, Chapter 248, Laws of 1957, 78-801 through 78-818, 78-908, 75-5102, 89-116.2, 89-403, 93-2021, 93-2022, 93-2025, 44-407, 3-2703, 46-241, 91-510, 91-511, 91-513, 66-2418, 81-2011, 81-2016, 81-2122, 81-2124, 46-2330, 60-139, 78-305, 78-306, 78-307, 78-308, 92-837, 11-2021, 4-231, 80-115, 80-747, R. C. M. 1947

79-410. Fund structure. There are in the state treasury only the following funds:

(1) General fund. The general fund consists of all moneys deposited in the state treasury which are available to defray the general costs of state government and which do not fall into one of the categories enumerated below.

(2) Earmarked revenue fund. The earmarked revenue fund consists of moneys from state sources deposited in the state treasury which are specifically earmarked by law for the purpose of defraying the costs of a particular agency, program, or function of state government.

(3) Sinking fund. The sinking fund consists of moneys deposited in the state treasury for the payment of principal and interest, and the accumulation of reserves for bonded or other indebtedness.

(4) Federal and private revenue fund. The federal and private revenue fund consists of all expendable moneys deposited in the state treasury from federal or private sources, including trust income, which are to be used for the operation of state government.

(5) Federal and private grant clearance fund. The federal and private grant clearance fund consists of all expendable moneys deposited in the state treasury from federal or private sources, including trust income, which the state disburses to persons, associations or units of local government. When the final disposition of expendable federal or private moneys is unknown at the time of receipt, they shall be deposited in the federal and private grant clearance fund; but those moneys to be used for the operation of state government shall be transferred to the federal and private revenue fund prior to disbursement.

(6) Bond proceeds and insurance clearance fund. The bond proceeds and insurance clearance fund consists of

(a) Moneys deposited in the state treasury obtained from the sale of bonds, certificates of indebtedness or similar obligations.

(b) Moneys indemnifying the state for loss or damage of property.

(7) Revolving fund. (a) The revolving fund consists of moneys used to

- (i) Defray reimbursable expenditures, and
- (ii) Supply working capital for enterprise-type operations.

(b) An appropriation of a specific amount from the revolving fund is not a limitation on total expenditures for the period for which the appropriation is made, but is the maximum amount that may be withdrawn at any given time.

(8) Trust and legacy fund. The trust and legacy fund consists of moneys deposited in the state treasury which the state administers as a trustee pursuant to a law or a trust agreement restricting the use of the money for a specified purpose and prohibiting the expenditure of the principal for a period of at least five (5) years.

(9) Agency fund. The agency fund consists of moneys deposited in the state treasury which are held and disbursed by the state as a custodian or agent, and includes, but not limited to moneys held for the purpose of paying insurance or retirement benefits, moneys arising from lost or unclaimed property, and other moneys of a similar nature.

History: En. Sec. 2, Ch. 147, L. 1963.

79-411. Previous definitions of funds—future provisions for segregation of moneys. (1) It is the intent of the legislative assembly that the definitions in section 2 [79-410] of this act supersede all previous definitions of public funds which are inconsistent with the definitions found in this act.

(2) Any laws enacted in the future, or any contracts entered into in the future in pursuance of law, that require the segregation of moneys in the state treasury by means of a separate treasury fund, shall be interpreted as permitting the segregation of such moneys by means of a subfund or account within one of the funds created by section 2 [79-410] of this act.

History: En. Sec. 3, Ch. 147, L. 1963.

79-412. Additional accounts authorized. The enumeration of treasury funds in section 2 [79-410] of this act does not prohibit the state treasurer from establishing and maintaining

(1) Clearance or suspense accounts for the purpose of paying refunds, for the purpose of grouping payments from different funds or accounts prior to disbursement, or for the purpose of conveniently processing receipts before crediting the proper fund.

(2) Investment funds authorized under the "Unified Investment Plan."

History: En. Sec. 4, Ch. 147, L. 1963.

79-413. Creation and abolition of new accounts. Moneys deposited in each fund except the general fund shall be segregated by the state controller by specific accounts based on source, function or department. When moneys deposited in the state treasury cannot logically be credited to an existing account, or when it is impractical or undesirable for an agency of state government to segregate moneys in its own accounts, the controller, in his discretion, may create new accounts consistent with the definitions in section 2 [79-410] of this bill [act]; however, the controller shall create as few new accounts as practicable. The controller shall

periodically examine all accounts, and shall abolish or consolidate inactive or unnecessary accounts.

History: En. Sec. 5, Ch. 147, L. 1963.

79-414. Maintenance of fund and account records—accounting procedures. (1) The state treasurer shall record receipts and disbursements for treasury funds, and shall maintain fund records in such a manner as to reflect the total cash and invested balance of each fund. The state treasurer shall also maintain records of individual subfunds within the sinking fund, bond proceeds and insurance clearance fund, and trust and legacy fund in such a manner as to reflect the total cash and invested balance of each subfund. When necessary to meet federal or other requirements that moneys be segregated in the treasury, the state treasurer may establish subfunds within any funds listed in section 2 [79-410] of this act.

(2) The state controller shall record receipts and disbursements for treasury funds and for accounts within treasury funds, and shall maintain records in such a manner as to reflect the total cash and invested balance of each fund and each account. The controller shall adopt the necessary procedures to insure that interdepartmental or intradepartmental transfers of money do not result in inflation of figures reflecting total governmental costs and revenues.

History: En. Sec. 6, Ch. 147, L. 1963.

79-415. Appropriation and disbursement of moneys from the treasury.

(1) Moneys deposited in the general fund, the earmarked revenue fund, the revolving fund, and the federal and private revenue fund, with the exception of trust income, shall be paid out of the treasury only on appropriation made by law.

(2) Moneys deposited in the federal and private grant clearance fund, the sinking fund, the bond proceeds and insurance clearance fund, the trust and legacy fund and the agency fund may be paid out of the treasury under general laws, or contracts entered into in pursuance of law, permitting such disbursement.

History: En. Sec. 7, Ch. 147, L. 1963.

79-416. Special funds abolished—transfer to general fund. The armory physical plant fund, post war planning and construction reserve fund, state fire insurance fund, Carey land act fund and photographers' license fund are abolished. All moneys in these funds are transferred to the general fund.

History: En. Sec. 239, Ch. 147, L. 1963.

Repealing Clause

Section 242 of Ch. 147, Laws 1963 read "Sections 79-103, 79-207, 79-401 through 79-408, 79-1008, 79-1204, 79-1205, 79-1210, 79-501 through 79-505, 3-203, 78-203 through 78-208, 78-401 through 78-416, 78-502, 78-601 through 78-620, 78-701 through 78-727, 78-728 through 78-736 enacted as sections 1 through 9, Chapter 248, Laws of 1957, 78-801 through 78-818, 78-908, 75-5102, 89-116.2, 89-403, 93-2021, 93-2022, 93-2025, 44-407, 3-2703, 46-241, 91-510, 91-511, 91-513, 66-2418, 81-2011, 81-2016,

81-2122, 81-2124, 46-2330, 60-139, 78-305, 78-306, 78-307, 78-308, 92-837, 11-2021, 4-231 and 80-115, 80-747, R. C. M. 1947, are repealed."

Separability Clause

Section 243 of Ch. 147, Laws 1963 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 5—STATE HORTICULTURAL REVOLVING FUND—
REVOLVING FUNDS OF DEPARTMENT OF AGRICULTURE

(Repealed—Section 242, Chapter 147, Laws of 1963)

79-501 to 79-505. (3634.1, 3634.2) Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 144, L. 1925; Sec. 1, Ch. 51, L. 1927; Secs. 1 to 3, Ch. 227, L. 1951), relating to revolving

funds of the department of agriculture, were repealed by Sec. 242, Ch. 147, Laws 1963.

CHAPTER 6—PERPETUAL APPROPRIATIONS FOR SUPPORT OF
STATE INSTITUTIONS—CONTINGENT
REVOLVING ACCOUNTS

Section 79-601. Support of state institutions.

79-602. Contingent revolving accounts—when established.

79-603. State institutions may retain certain moneys, when.

79-601. (194) Support of state institutions. For the support and endowment of each and every of the state institutions of the state of Montana now existing or hereafter to be created there is annually and perpetually appropriated respectively:

1. The income from all permanent endowments, and from all land grants as provided by law. All moneys received or collected by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose whatever, except such as may have been heretofore pledged to secure the payment of principal and interest of bonds issued in connection with the construction of buildings, or which may constitute temporary deposits, all or part of which may be subject to withdrawal or repayment, shall be paid over to the state treasurer who shall deposit the same to the credit of the proper fund.

History: En. Sec. 3, Ch. 112, L. 1921; re-en. Sec. 194, R. C. M. 1921; amd. Sec. 3, Ch. 14, L. 1941; amd. Sec. 11, Ch. 147, L. 1963.

of the first sentence of paragraph 1; deleted from paragraph 1 a former second sentence reading, "All such funds shall be kept by the state treasurer in specific fund accounts, so entitled as to clearly indicate their purposes and sources"; deleted "on or after July 1, 1941" after "received or collected" in the third sentence of paragraph 1; and substituted "the proper fund" for "the general fund of the state" at the end of the section.

Amendment

The 1963 amendment deleted "funds and" before "endowments" near the beginning of paragraph 1; deleted "and all such contributions as may be derived from public or private bounty" from the end

79-602. (195) Contingent revolving accounts—when established. The state controller may authorize the establishment and maintenance at any and all of the state institutions, or in any of the departments, boards, or commissions, of Montana of contingent revolving accounts, transferring in trust to the business offices of said institutions such sums of money as may appear necessary, to be used by said institutions for the payment of demands requiring immediate cash payment, under specific regulations to be established by the state controller. But each and every state institution granted a contingent revolving account shall report to the state controller monthly all transactions involving such contingent revolving accounts, with proper vouchers for every payment made

therefrom. The state controller may cancel such authorizations and recall such funds at pleasure.

History: En. Sec. 4, Ch. 112, L. 1921; re-en. Sec. 195, R. C. M. 1921; amd. Sec. 9, Ch. 80, L. 1961.

Amendment

The 1961 amendment, in the beginning of the section, substituted the words "state controller may" for the words

"state board of examiners may in its discretion, by resolution duly adopted and entered upon the minutes of said board"; and substituted the words "the state controller" each time they appear, for references to the state board of examiners.

79-603. (196) State institutions may retain certain moneys, when. The state controller may in his discretion permit any state institution to retain in its possession, under such conditions as the state controller may prescribe, incomes from dormitories conducted by state institutions, and moneys deposited in trust by students, members, inmates or other persons, which may be subject to refund to the depositors on demand or otherwise. The state controller may cancel such permission and require the deposit of any or all such funds with the state treasurer at his pleasure; provided, however, that the state treasurer, with the consent of the state depository board, shall designate depositories for such funds and securities, and require indemnifying bonds or pledged securities sufficient to adequately and properly secure the amounts deposited in said depositories.

History: En. Sec. 5, Ch. 112, L. 1921; re-en. Sec. 196, R. C. M. 1921; amd. Sec. 2, Ch. 157, L. 1931; amd. Sec. 12, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "state

controller" in three places for "state board of examiners" or "board"; deleted "by resolution duly adopted and entered upon the minutes of said board" after "may in his discretion" in the first sentence; and made minor changes in phraseology.

CHAPTER 8—MISCELLANEOUS POWERS AND DUTIES OF STATE TREASURER—SUSPENSION

Section 79-813. Sale of property in escheated estates—disposal of proceeds.

79-813. (197.1) Sale of property in escheated estates—disposal of proceeds. All stocks, bonds, securities, personal property, and effects now held or hereafter received by the state treasurer, and which belong to certain estates that have escheated to the state of Montana, shall be disposed of by the state treasurer at public auction at his office in the capitol. The state treasurer shall cause notice of such auction to be published in one (1) newspaper published in the city of Helena in two (2) issues during the period of two (2) weeks prior to such auction sale, stating the time and place of sale, and giving a list of all such stocks, bonds, securities, personal property and effects to be sold, reserving the right to reject any or all bids. The state treasurer shall credit the proceeds of such sale to the proper fund, making proper accounting to the various estates of the amounts received.

History: En. Sec. 1, Ch. 58, L. 1931; amd. Sec. 13, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "proper fund" for "escheated estates fund" in the last sentence.

CHAPTER 9—EXPENDITURES BY STATE DEPARTMENTS IN EXCESS OF INCOME PROHIBITED

Section 79-901. State officers and institutions—limit on expenditures.
79-904. Penalty for violation of act.

79-901. State officers and institutions—limit on expenditures. It shall be unlawful for the board of trustees, executive board, managerial staff, president, deans and faculty, or any other authority of any state institution maintained in whole or in part by the state, or for any officer, department, board, commission or bureau, having charge of the disbursement or expenditure of the income provided by legislative appropriation, or otherwise, to expend, contract for the expenditure, or to incur or permit the incurring of any obligation whatsoever, in any one year, in excess of the income provided for such year, or for the state board of examiners, or any supervisory board or authority either directly or indirectly to authorize, direct or order any such institution, officer, department, board, commission or bureau to increase any expenditures, except as specifically provided by law, and it shall be and is hereby made the duty of any and all of such institutions, officers, departments, boards, commissions and bureaus to keep such expenditures, obligations and liabilities within the amount of such income.

History: En. Sec. 1, Ch. 40, L. 1937; amd. Sec. 2, Ch. 82, L. 1961.

Amendment

The 1961 amendment after the words "provided for such year" deleted the phrase which read "or in excess of such income as decreased by the state board

of examiners, under and in accordance with the provisions of section 79-903, for such year"; and after the words "increase any expenditures" substituted the words "except as specifically provided by law" for the words "except as hereinafter provided."

DECISIONS UNDER FORMER LAW

Control by Board of Examiners

Mandate was issued by the supreme court to compel state board of public welfare to present to the state board of examiners forthwith written application setting forth the circumstances confronting it with reference to the need for

money to carry out the relief program in Silver Bow County and requesting authorization for expenditures to meet the relief requirements in Silver Bow County, Montana. State ex rel. Kidder v. Fouse, 137 M 483, 353 P 2d 755, 757.

79-902, 79-903. Repealed.

Repeal

These sections (Secs. 2, 3, Ch. 40, L. 1937; Sec. 1, Ch. 197, L. 1953), relating to emergency expenditures in excess of ap-

propriations and decrease of expenditures on inspection of inventories, were repealed by Sec. 4, Ch. 82, Laws 1961.

79-904. Penalty for violation of act. Any authority or member of a board of trustees or any person, officer or employee violating the provisions of section 79-901, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or imprisoned in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment; and in addition thereto, said authority, member, person, officer or employee, shall be personally liable, and the surety or sureties on his bond shall also be

liable, to the state of Montana for the amount of the excess thus unlawfully expended, and said authority, member, person or officer shall be guilty of misfeasance in office, and such employee shall be guilty of wrongdoing and each shall be subject to removal from office or from such employment, upon complaint of any taxpayer, filed in a district court of this state, and upon proof of violation of this act, in accordance with law.

History: En. Sec. 4, Ch. 40, L. 1937; amd. Sec. 3, Ch. 82, L. 1961.

Amendment

The 1961 amendment after the reference section 79-901 deleted a reference to section 79-902.

Repealing Clause

Section 4 of Ch. 82, Laws 1961 read "Sections 79-902 and 79-903, Revised Codes of Montana, 1947, are repealed."

CHAPTER 10—STATE BUDGET ACT

- Section 79-1011. Disposal of unexpended appropriations.
 79-1012. Governor chief budget officer—appointment of budget director.
 79-1013. Blanks for preparation of budget estimates—distribution—form—submission of information.
 79-1014. Preliminary budget—preparation—submission to governor and governor-elect.
 79-1015. Submission of budget to legislature—form—contents.
 79-1016. Inquiries and investigations by budget director.
 79-1017. Other duties of director.
 79-1018. Power of director to demand and receive information from state departments, officers, etc.
 79-1019. Authorization to expend during first year of biennium from appropriation for second year.

79-1002 to 79-1004. (295 to 297) Repealed.

Repeal

These sections (Secs. 2 to 4, Ch. 205, L. 1919; amd. Secs. 1, 2, Ch. 167, L. 1933; amd. Secs. 7, 8, Ch. 194, L. 1951; amd. Sec. 1, Ch. 155, L. 1955), relating to re-

quests for annual appropriation by departments and other state agencies and institutions, were repealed by Sec. 11, Ch. 158, Laws 1959.

79-1004.1. Repealed.

Repeal

This section (Sec. 9, Ch. 194, L. 1951), relating to the examination of requests,

was repealed by Sec. 11, Ch. 158, Laws 1959.

79-1005. (298) Repealed.

Repeal

This section (Sec. 5, Ch. 205, L. 1919; amd. Sec. 1, Ch. 163, L. 1921; amd. Sec. 3, Ch. 167, L. 1933; amd. Sec. 10, Ch. 194,

L. 1951), relating to the budget and budget bill, was repealed by Sec. 11, Ch. 158, Laws 1959.

79-1008. (301) Repealed.

Repeal

This section (Sec. 8, Ch. 205, L. 1919), relating to supplementary appropriations,

was repealed by Sec. 242, Ch. 147, Laws 1963.

79-1010. (303) Repealed.

Repeal

This section (Sec. 10, Ch. 205, L. 1919; amd. Sec. 2, Ch. 46, L. 1937), relating to

printing and distribution of budget, was repealed by Sec. 11, Ch. 158, Laws 1959.

79-1011. (304) Disposal of unexpended appropriations. All moneys now or hereafter appropriated for any specific purpose shall, after the expiration of the time for which so appropriated, be covered back into the several funds and accounts from which originally appropriated; provided, however, that any unexpended balance in any specific appropriation may be used for either of said years for which such appropriation has been made.

History: En. Sec. 2, H. B. 372, p. 16, L. 1895, not published in the codes; re-en. Sec. 304, R. C. M. 1921; amd. Sec. 14, Ch. 147, L. 1963.

Amendment

The 1963 amendment inserted "and accounts" after "the several funds."

79-1012. Governor chief budget officer—appointment of budget director. The governor shall be the chief budget officer of the state and shall appoint a director of the budget, who shall hold office at the pleasure of the governor, and whose duty it shall be to carry out the provisions of this chapter.

History: En. Sec. 1, Ch. 158, L. 1959.

Title of Act

An act to make the governor the chief budget officer of the state, requiring the governor to prepare and present a budget message and balanced budget to each regular session of the legislative assembly; to establish the office of director of the budget and providing for the appointment of the director of the budget who shall hold office at the pleasure of the governor; requiring each department, state institution and agency to submit information requested by the director of the budget, providing that the director of the budget shall prepare a budget request for any department, institution or agency not submitting requested information; to provide for the preparation of a preliminary budget by the director of the budget; fixing

the form and content of the budget and designating the items of revenue and expenditures which must be set forth and requiring a proposed budget bill and recommendations for new sources of revenue; granting to the governor-elect the right to make comments and recommendations to be incorporated in the budget; granting power to the director of the budget to investigate the items submitted to his office and to demand and receive requested information from every department, officer, board, commission, or institution; to amend sections 82-109, 82-110 and 82-112 of the Revised Codes of Montana, 1947; repealing sections 79-1002, 79-1003, 79-1004, 79-1004.1, 79-1005, and 79-1010, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith.

79-1013. Blanks for preparation of budget estimates—distribution—form—submission of information. In the preparation of a state budget the director of the budget shall not later than the first day of July in the year preceding the convening of the legislative assembly, distribute to all state offices and institutions, including the judicial department, the proper blanks necessary for the preparation of budget estimates. These blanks shall be in such form as shall be prescribed by the director of the budget to procure such information as the director of the budget shall, in his discretion, feel is necessary for the preparation of a budget including budget estimates, estimates of revenues, actual revenues received, expenditures made and other information classified and grouped as requested by the director of the budget and covering such period or periods of time as specified by the director of the budget.

(a) Except as provided in this paragraph, it shall be the duty of each department and agency to submit information requested by the director of the budget on or before the first day of August in the year preceding the convening of the legislative assembly. Each unit of the

university of Montana and each state custodial institution shall submit such information on or before the first day of September of such year.

(b) If any department, institution or agency shall fail to present such requested information within the time herein specified, the director of the budget shall note that fact in the budget submitted to the governor, and the director of the budget shall prepare a budget request on behalf of such department, institution or agency, based upon his studies of the operations, plans and needs thereof.

History: En. Sec. 2, Ch. 158, L. 1959; amd. Sec. 1, Ch. 91, L. 1961.

Amendment

The 1961 amendment advanced the date for distribution of blanks from August 15 to July 1 and for return of budget information, as specified in paragraph

(a), from September 15 to August 1; inserted the words "Except as provided in this paragraph" at the beginning of paragraph (a); deleted "state institution" following "department" in the first sentence of paragraph (a); and added the second sentence to paragraph (a).

79-1014. Preliminary budget—preparation—submission to governor and governor-elect. Upon receipt of the completed forms and other available data and information, the director of the budget shall examine the same for the purpose of determining the necessity of the expenditures and funds requested by appropriations and shall, on or before the first day of December in the year preceding the convening of the legislature, submit to the governor and to the governor-elect, if one there be, in writing, a preliminary budget for the ensuing biennium containing the detailed information hereinafter required to be set forth in Part 2 of the budget to be submitted by the governor to the legislative assembly.

History: En. Sec. 3, Ch. 158, L. 1959.

79-1015. Submission of budget to legislature—form—contents. The governor shall, following the receipt of the preliminary budget from the director of the budget, have prepared a budget for the ensuing biennium and shall submit said budget to each member of the legislative assembly at the time of the convening of the legislative assembly. The budget submitted shall set forth a balanced financial plan for the state government for each fiscal year of the ensuing biennium, and shall be set up in three (3) parts, the nature and contents of which shall be as follows:

Part 1 shall consist of a budget message by the governor which shall outline the financial policy of the state government for the ensuing biennium and shall describe in connection therewith the important features of the financial plan; it shall also embrace a general budget summary setting forth the aggregate figures of the budget in such manner as to show a balance between the total proposed expenditures and the total anticipated revenues together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The general budget summary shall be supported by explanatory schedules or statements, classifying both expenditures and income contained therein by organization units, accounts and funds.

If so requested by the governor-elect, the governor shall incorporate in the budget, as a separate section, such estimates, comments and recom-

mendations as the governor-elect may wish to make, and this section of the budget shall be transmitted to the legislative assembly without change, and it is the duty of the governor-elect in recommending changes to show a balance between proposed expenditures and anticipated revenue.

Part 2 shall set forth the detailed budget estimates, both of expenditures and revenues of each department, institution and agency of the state in the following manner:

1. The revenues from all sources including appropriations for each fiscal year of the last completed biennium, for the completed fiscal year of the current biennium, and appropriations and estimated revenue from other sources for the current fiscal year in progress. Revenue shall be classified by organization units, sources, accounts and funds.

2. Expenditures during each fiscal year of the last completed biennium, expenditures for the completed fiscal year of the current biennium and estimated expenditures for the current fiscal year in progress. These expenditures shall be classified by organization units, objects, accounts and funds.

3. The amount approved by the governor as necessary for the carrying on of the work of each department, office or institution itemized as to the purpose for each fiscal year of the ensuing biennium.

4. Statements of the bonded indebtedness of the state government showing the debt redemption requirements, the debt authorized and unissued and the condition of the sinking funds and accounts.

5. A statement of the cash balances on hand in each of the accounts and funds at the close of each of the two last completed fiscal years.

6. A statement containing further recommendations of the governor should he deem it necessary.

Part 3 shall include a proposed budget bill, authorizing by departments, institutions and agencies, by accounts and by funds, all expenditures for each fiscal year of the ensuing biennium, and must be accompanied by detailed and specific recommendations as to new sources of revenue, if necessary, to balance and to finance the budget. If recommendations for new sources of revenue are submitted, estimates of revenue to be realized from such new sources must also be submitted.

History: En. Sec. 4, Ch. 158, L. 1959; amd. Sec. 15, Ch. 147, L. 1963.

Amendment

The 1963 amendment inserted "accounts" near the end of the second para-

graph and near the ends of paragraphs 1 and 2; inserted "and accounts" at the end of paragraph 4; inserted "accounts and" in paragraph 5; and inserted "by accounts" after "institutions and agencies" in the first sentence of the final paragraph.

79-1016. Inquiries and investigations by budget director. The director of the budget shall make such further inquiries and investigations as he shall deem necessary as to any item included in the report and estimates furnished by any department, agency or institution. In making such investigations, he shall be allowed his necessary expenses of travel and subsistence as provided by law in visiting any institution or department in the state. The director of the budget may appoint a chief assistant and may employ such other personnel as may be necessary to carry out the provisions of this chapter.

History: En. Sec. 5, Ch. 158, L. 1959.

79-1017. Other duties of director. The director of the budget in addition to the duties hereinbefore set forth shall perform such other duties as the governor as chief budget officer of the state may direct. He shall, as often as requested by the governor, prepare and furnish reports to the governor concerning appropriations made by the legislative assembly, the receipts from sources other than appropriations, and expenditures made by any department, office or institution of the state. The director of the budget shall be available to all standing committees of the house of representatives and the senate concerned with appropriations, revenue, finance and claims and shall furnish to such committees any information required while said committees are considering the budget.

History: En. Sec. 6, Ch. 158, L. 1959.

79-1018. Power of director to demand and receive information from state departments, officers, etc. The director of the budget shall have power to demand and receive from every department, officer, board, commission, or institution, including the state controller, at any time, any and all information requested by the director of the budget.

History: En. Sec. 7, Ch. 158, L. 1959.

79-1019. Authorization to expend during first year of biennium from appropriation for second year. A state department, institution or agency of the executive branch desiring authorization to make expenditures during the first fiscal year of the biennium from appropriations for the second fiscal year of the biennium, shall make application for such authorization to the governor through the director of the budget. If the the governor finds that, due to an unforeseen and unanticipated emergency, the amount actually appropriated for the first fiscal year of the biennium, with all other income, will be insufficient, for the operation and maintenance of said department, institution or agency during the year for which the appropriation was made, he may, after careful study and examination of the request and upon review of the recommendation of the director of the budget, authorize an expenditure during the first fiscal year of the biennium to be made from the appropriation for the second fiscal year of the biennium. The department, institution or agency may expend the amount authorized by the governor only for the purposes specified in the authorization. The governor shall report to the next legislative assembly, in a special section of the budget, the amounts expended as a result of all such authorizations granted by him, and shall request that any necessary supplemental appropriation bills be passed.

History: En. Sec. 1, Ch. 82, L. 1961.

Title of Act

An act to provide that the governor may authorize an expenditure during the fiscal year of the biennium from the appropriation for the second fiscal year of the biennium if he finds that the amount actually appropriated for the first fiscal year of the biennium is in-

sufficient due to an unforeseen and unanticipated emergency; to amend section 79-901, Revised Codes of Montana, 1947, by deleting reference to the board of examiners' power to decrease appropriations; to amend section 79-904 by deleting reference to section 79-902; and to repeal sections 79-902 and 79-903, Revised Codes of Montana, 1947.

CHAPTER 12—MONTANA TRUST AND LEGACY FUND—UNIFIED INVESTMENT PLAN

- Section 79-1202. Moneys to be invested according to unified plan.
 79-1203. Departments to request investment of moneys according to unified investment plan.
 79-1206. Investment of moneys—supreme court supervision—duty of land commissioners.
 79-1208. Treasurer's account of funds.
 79-1211. Annual transfer of interest collected.
 79-1212. Payments from Montana trust and legacy fund.
 79-1213. Payments made on order of board—annual statement of treasurer.
 79-1214. Limitation on payment from treasury.

79-1202. (5668.20) Moneys to be invested according to unified plan.

1. The state board of land commissioners is hereby authorized and required to invest the Montana trust and legacy fund subject to the provisions, regulations and limitations of sections 81-1001 to 81-1008, inclusive.

2. The state board of land commissioners is hereby authorized and required to invest in the long term investment fund the following: Moneys administered by the Montana highway patrolmen's retirement board in excess of twenty-five thousand dollars (\$25,000.00); moneys administered by the public employees' retirement board; moneys administered by the industrial accident board; all moneys subject to investment as designated by the teachers' retirement board; moneys designated as available by the Montana fish and game commission and all other moneys designated by statute. Moneys in the long term investment fund may be invested as follows:

(a) In or upon securities which are direct obligations of the United States government; securities which are guaranteed as to principal and interest by the United States government; securities issued by instrumentalities of the United States government.

(b) In general obligation bonds of school districts within the state of Montana; in general obligation bonds of the several counties and cities of the state of Montana; in general obligation bonds of the state of Montana; in capitol building bonds of the state of Montana, now issued or which may hereafter be issued; in bonds issued by the federal land banks; in bonds issued by the state board of examiners to construct an unemployment compensation commission office building including the landscaping and paving around said building, upon land adjacent to the capitol buildings; in bonds or other securities which may be issued for the construction of a physical education building at the state industrial school, provided that sufficient income from fees collected under section 80-816 shall be pledged for the retirement of such bonds or other securities; in interest-bearing warrants upon the general fund of the state and in interest-bearing warrants upon the general fund, the poor fund, the road fund, the retirement fund, or upon the bridge fund of the several counties and school districts of the state of Montana; the purchase of all such investments to be subject to the discretion of the board.

(c) In the obligations, and/or stock where stated, of the following agencies of the government of the United States of America, whether or not such obligations are guaranteed by such government;

- (1) Commodity credit corporation.
- (2) Federal intermediate credit banks.
- (3) Federal land banks.
- (4) Central bank for co-operatives.
- (5) Federal home loan banks, and stock thereof.
- (6) Federal national mortgage association, and stock thereof when acquired in connection with sale of mortgage loans to such association.

(d) In first mortgages on unencumbered real property when such mortgages are guaranteed or insured in the amount of fifty per centum (50%) or more of the loan made in the event of default by the United States government or any agency or corporate agency of the United States government and in obligations of housing authorities subject to the terms and limitations of section 35-143, provided, however, no more than fifty per centum (50%) of the funds in one (1) account shall be invested in such mortgages.

(e) In first mortgage bonds, debentures, notes and other evidences of indebtedness issued, assumed or guaranteed by any solvent and operating public utility corporation existing under the laws of the United States of America or any state thereof which bonds, debentures, notes and other evidences of indebtedness are, at the time of such investment, within the three (3) highest quality grades for the rating of such bonds, debentures, notes and other evidences of indebtedness by any nationally recognized investment rating agency.

(f) In equipment trust obligations or certificates adequately secured and evidencing an interest in transportation equipment, wholly or in part within the United States of America, which obligations or certificates carry the right to receive determined portions of rental, purchase, or other fixed obligatory payments to be made for the use or purchase of such transportation equipment, and which obligations or certificates are, at the time of such investment, within the three (3) highest quality grades for the rating of such obligations or certificates by any nationally recognized investment rating agency.

All securities purchased and all cash on hand for each fund shall be kept separate in the long term investment fund and all interest collected shall be credited to the fund for which the securities were purchased.

3. The state board of land commissioners is hereby authorized and required to invest in the short term investment fund any surplus cash in the office of the state treasurer; any money in the sinking fund, which is not required for the immediate payment of any bond principal or interest, or which cannot be used for payment and redemption of bonds outstanding because of the same not being redeemable under the option provisions contained therein; any Montana highway patrolmen's retirement moneys less than twenty-five thousand dollars (\$25,000.00) as directed by the Montana highway patrolmen's retirement board and any other moneys designated by statute to be so invested or any moneys in the custody of any officer or officers of the state, or any governing body of any city, county or school district, the investment of which moneys is requested by the officer, or officers or governing body and which moneys

are subject to investment. The moneys in the short term investment fund may be invested as follows:

(a) The surplus cash in the office of the state treasurer may be invested in registered warrants of the state of Montana and in treasury obligations of the United States government. All warrants purchased shall bear no interest and the interest received from treasury obligations shall be credited to the general fund of the state of Montana.

(b) Any sinking fund and any other moneys may be invested in bonds of the state of Montana, bonds of the United States, in bonds issued by any agency or department of the United States, treasury obligations of the United States, and in interest-bearing warrants drawn against the general fund of the state of Montana; provided, however, that none of such moneys in the sinking fund shall be invested in bonds or securities except such as will be called in and paid at least fifteen (15) days prior to the time such moneys are required for the payment of principal and interest.

All securities purchased and all cash on hand for each account or subfund shall be kept separate in the short term investment fund and all interest collected shall be credited to the account or subfund for which the securities were purchased.

The state board of land commissioners is hereby authorized to employ, for the purpose of securing advice on retention, sale or purchase of securities, an expert on financial matters who has had a minimum of ten (10) years' experience in the investment field and there shall not be paid for such services an amount in excess of one thousand dollars (\$1,000.00) in any one fiscal year.

History: En. Sec. 2, Ch. 70, L. 1929; amd. Sec. 8, Ch. 176, L. 1953; amd. Sec. 1, Ch. 118, L. 1957; amd. Sec. 1, Ch. 173, L. 1959; amd. Sec. 1, Ch. 67, L. 1963; amd. Sec. 16, Ch. 147, L. 1963; amd. Sec. 1, Ch. 256, L. 1963.

Compiler's Note

This section was amended three times in 1963, once by Ch. 67, once by Ch. 147, and once by Ch. 256. None of the amendatory acts mentioned nor included the changes made by either of the others. Since the amendments do not appear to conflict, however, the compiler has made a composite section incorporating all three amendments.

Amendments

The 1957 amendment in subd. 2(d) raised the per cent of funds in one account that can be invested in mortgages from 40% to 50%.

The 1959 amendment in subd. 2(b) inserted the words "in bonds issued by the state board of examiners to construct an unemployment compensation commission office building including the landscaping and paving around said building, upon land adjacent to the capitol buildings."

Chapter 67, Laws 1963, inserted "the retirement fund" in the latter part of subd. 2 (b); inserted "and school districts" after "bridge fund of the several counties" near the end of subd. 2 (b); substituted present subd. 2 (c) for a clause reading, "(c) In debentures issued by the federal housing administrator, and in obligations of national mortgage associations"; inserted subds. (e) and (f) of subsection 2; and made a separate paragraph (the final paragraph of subsection 2) of the former final sentence of subd. 2 (d).

Chapter 147, Laws 1963, deleted a former first sentence of subd. 1 which read, "The state board of land commissioners is hereby authorized and required to invest as part of the Montana trust and legacy fund the following: The public school permanent fund, the other permanent funds originating in land grants from the United States for the support of higher institutions of learning, and for other state institutions of learning, subject to investment; the escheated estates fund, meaning all of the various sums paid over to the state treasurer from estates escheated or escheating to the state which have not been transferred to the public school permanent fund; all funds arising from any

donation, gift, grant, bequest or devise for the support, maintenance or benefit of any institution of learning or any institution supported in whole or in part by the state of Montana and not intended for immediate use but subject to long term investment and not legally in the custody of any lawfully constituted board, unless some other investment agency has been designated by the donor or by statute; all funds which become parts of the Montana trust and legacy fund under the provisions of article XXI of the constitution; and all other public funds of the state subject to long term investment not legally in the custody of any lawfully constituted board or the investment of which has not been designated by statute"; substituted "The state board of land commissioners is hereby authorized and required to invest" at the beginning of subd. 1 for "Moneys in the Montana trust and legacy fund shall be invested"; substituted "Moneys administered by the Montana highway patrolmen's retirement board" in the preliminary paragraph of subd. 2 for "That part of the Montana highway patrolmen's retirement fund"; substituted "moneys administered by the public employees' retirement board" in the preliminary paragraph of subd. 2 for "the public employees' retirement fund"; substituted "moneys administered by the industrial accident board" in the preliminary paragraph of subd. 2 for "the industrial accident reserve fund"; substituted "moneys" for "funds" in the preliminary paragraph of subd. 2 in the clause pertaining to teachers' retirement; substituted "moneys" for "that part of the fish and game fund" in the preliminary paragraph of subd. 2 in the clause pertaining to the fish and game commission; substituted "moneys" for "funds" or "fund" near the end of the first sentence of the preliminary paragraph of subd. 2, six places in the preliminary

paragraph of subd. 3, and before "may be invested" in paragraph 3 (b); substituted "the sinking fund" or "Any sinking fund" for "any state bond sinking and interest fund" in the preliminary paragraph of subd. 3, and for "any sinking and interest fund" at the beginning of paragraph 3 (b) and in the proviso to paragraph 3 (b); deleted from the preliminary paragraph of subd. 3 a clause which preceded the clause pertaining to highway patrolmen's retirement moneys and read, "any educational bond interest and sinking fund"; deleted from the end of paragraph 3 (b) the words "of the obligations for which the sinking and interest fund was created"; substituted "account or subfund" for "fund" in two places in the paragraph following paragraph 3 (b); and made minor changes in phraseology.

Chapter 256, Laws 1963, inserted the words "in bonds or other securities which may be issued for the construction of a physical education building at the state industrial school, provided that sufficient income from fees collected under section 80-816 shall be pledged for the retirement of such bonds or other securities" in paragraph 2 (b).

Repealing Clauses

Section 2 of Ch. 118, Laws 1957; Sec. 2 of Ch. 173, Laws 1959 and Sec. 2 of Ch. 67, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 173, Laws 1959 provided the act should be in effect from and after its date of passage and approval. Approved March 7, 1959.

Section 3 of Ch. 67, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 25, 1963.

79-1203. (5668.21) Departments to request investment of moneys according to unified investment plan. Except as otherwise provided, any department of the government of the state of Montana, state board, commission, bureau, institution, office or officer, which has under its or his administration any moneys subject to investment, must have such moneys or any part thereof subject to investment invested by the state board of land commissioners as part of the Montana trust and legacy fund, the long term investment fund or the short term investment fund depending on the nature of the moneys and the time when the principal invested may be required for the purpose for which it was accumulated. The said board is hereby authorized and required to invest and administer the moneys for which such request has been made.

History: En. Sec. 3, Ch. 70, L. 1929; amd. Sec. 9, Ch. 176, L. 1953; amd. Sec. 17, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "moneys" for "fund" in four places; and deleted

"or part of fund" before "for which such request has been made" at the end of the section.

79-1204, 79-1205. (5668.22, 5668.23) Repealed.

Repeal

These sections (Secs. 4, 5, Ch. 70, L. 1929), relating to transfers to the trust and

legacy fund, were repealed by Sec. 242, Ch. 147, Laws 1963.

79-1206. (5668.24) Investment of moneys—supreme court supervision—duty of land commissioners. All moneys invested as the Montana trust and legacy fund as provided in article XXI of the constitution, shall be invested as one (1) common fund and shall be invested in the same kinds of securities as the constitution and the statutes prescribe for the investment of the other moneys under the administration of the state board of land commissioners, and also subject to the special limitations of the said article XXI. The entire investment of the Montana trust and legacy fund shall be subject to the supervision of the justices of the supreme court as provided in section 17 of the said article. The commissioner of state lands and investments shall perform the same duties and exercise the same powers with regard to the investment administration of the moneys under the unified investment plan as he performs with regard to the other investments made by the state board of land commissioners.

History: En. Sec. 6, Ch. 70, L. 1929; amd. Sec. 10, Ch. 176, L. 1953; amd. Sec. 18, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "mon-
eys" for "funds" in three places.

79-1208. (5668.26) Treasurer's account of funds. The state treasurer shall keep separate each account and subfund which is invested and administered according to the unified investment plan and shall also keep an account of the total of each investment fund and of all the investments belonging to such fund.

History: En. Sec. 8, Ch. 70, L. 1929; amd. Sec. 11, Ch. 176, L. 1953; amd. Sec. 19, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "keep separate each account and subfund" for

"keep a separate account to be designated by name and number for each and every fund"; substituted "each investment fund" for "such fund"; and deleted the former second and third sentences, for text of which see parent volume.

79-1210. (5668.28) Repealed.

Repeal

This section (Sec. 10, Ch. 70, L. 1929), relating to the transfer of accrued interest,

was repealed by Sec. 242, Ch. 147, Laws 1963.

79-1211. (5668.29) Annual transfer of interest collected. On the last day of December each year the interest collected shall be credited pro rata to each and every subfund then constituting the Montana trust and legacy fund that was in the keeping of the state on January, based on the total thereof on that date, and shall be added to each such subfund, or held available for payment, according to the provisions of article XXI of the constitution and of the statutes and other valid provisions applicable thereto. If any subfund is larger or smaller on December 31, than on January 1 of the same year, then the average of the amounts on these two

(2) dates shall be the basis for calculating the interest to be credited to that subfund. The interest on all other subfunds shall be credited to each subfund as earned by each such subfund.

History: En. Sec. 11, Ch. 70, L. 1929; amd. Sec. 13, Ch. 176, L. 1953; amd. Sec. 20, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the words "subfund" or "subfunds" for the words "fund" or "funds" in seven places.

79-1212. (5668.30) Payments from Montana trust and legacy fund. The principal, and any part thereof, of each and every subfund constituting the Montana trust and legacy fund shall be subject to payment at any time when due under the constitutional and statutory provisions applicable thereto and according to the provisions of the gift, donation, grant, legacy, bequest, or devise through or from which the particular subfund arises.

History: En. Sec. 12, Ch. 70, L. 1929; amd. Sec. 21, Ch. 147, L. 1963.

"Both payments of interest earnings and payments of principal shall be made upon warrants duly issued by the state auditor under orders received by him from the authorities having the legal control of the use of the various funds."

Amendment

The 1963 amendment substituted the word "subfund" for "fund" in two places; and deleted a second sentence reading:

79-1213. (5668.31) Payments made on order of board—annual statement of treasurer. Whenever any payment is required to be made of interest or principal from any fund administered according to the unified investment plan, which payment is not subject to the order of any department of the government of the state, state board, commission, bureau, institution, office or officer, other than the state board of land commissioners, the state treasurer shall send a statement in duplicate to such board of the payment or payments to be made showing all essential facts relating thereto. The board shall then issue orders for warrants to be drawn for all payments approved by it.

During January of each year and at such other times as may be required the state treasurer shall submit to the board a statement covering all such interest payments to be made for the preceding year and all such payments from principal to be made at that time giving all necessary information relating thereto. The board shall then issue orders for warrants to be drawn for all payments approved by it.

History: En. Sec. 13, Ch. 70, L. 1929; amd. Sec. 14, Ch. 176, L. 1953; amd. Sec. 22, Ch. 147, L. 1963.

paragraph; deleted "or as required by the nature of the fund involved" after "preceding year" in the first sentence of the second paragraph; and, in the last sentences in both paragraphs substituted "orders for warrants to be drawn" for "orders upon the state auditor to issue warrants."

Amendment

The 1963 amendment substituted "any fund" for "any endowment fund or other fund" in the first sentence of the first

79-1214. (5668.32) Limitation on payment from treasury. No order or warrant shall ever be issued upon any subfund, account or fund for a larger amount than the sum total of the particular subfund, account or fund to which it applies, and if such order or warrant is issued, the state treasurer shall refuse to pay the same and, in the case of subfunds, accounts or funds for which the treasurer maintains balances, he shall be personally liable under his official bond for the entire overdraft resulting from such payment if made.

History: En. Sec. 14, Ch. 70, L. 1929; amd. Sec. 15, Ch. 176, L. 1953; amd. Sec. 23, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the

words "subfund, account or fund" for the words "fund" and "funds" in two places; and inserted "in the case of subfunds, accounts or funds for which the treasurer maintains balances, he" before "shall be personally liable."

CHAPTER 13—POST WAR PLANNING AND CONSTRUCTION RESERVE FUND

(Repealed—Section 1, Chapter 55, Laws of 1959)

79-1301 to 79-1308. Repealed.

Repeal

These sections (Secs. 1 to 8, Ch. 148, L. 1945), relating to the post war planning

and construction reserve fund, were repealed by Sec. 1, Ch. 55, Laws 1959.

CHAPTER 14—INVESTMENT INCOME OF STATE INSTITUTIONS

Section 79-1401. Monthly deposit of moneys received from permanent grants of state educational institutions.

79-1402. Disbursement of said funds.

79-1403. Income and interest moneys to be first exhausted in payment of claims.

79-1401. (1922) Monthly deposit of moneys received from permanent grants of state educational institutions. All moneys received from the investment of grants of a state institution and all money received from the leasing of lands granted to a state institution shall, at the close of each calendar month, be deposited with the state treasurer of Montana for each of such institutions, to the credit of the federal and private revenue fund.

History: En. Sec. 1, Ch. 120, L. 1909; re-en. Sec. 1922, R. C. M. 1921; amd. Sec. 1, Ch. 89, L. 1961; amd Sec. 24, Ch. 147, L. 1963.

Amendments

The 1961 amendment substituted the words "a state institution" for a phrase which read "the university of Montana, the agricultural college of Montana, school of mines of Montana, state normal school of Montana, state reform school of

Montana, and deaf and dumb school of Montana" and for the words "said institutions."

The 1963 amendment substituted "grants" for "the permanent funds" near the beginning of the section, and substituted "the federal and private revenue fund" for "what shall be known and designated as the 'interest and income fund' of each of said institutions" at the end of the section.

79-1402. (1923) Disbursement of said funds. The money received by the state treasurer under the provisions of the preceding section shall be paid out by him only on warrant issued by the state auditor in payment of claims for expenses actually incurred for the support and maintenance of the institution filing the same.

History: En. Sec. 2, Ch. 120, L. 1909; re-en. Sec. 1923, R. C. M. 1921; amd. Sec. 2, Ch. 89, L. 1961.

Amendment

The 1961 amendment deleted from the end of the section a clause which read

"and the state auditor shall not draw warrants on said interest and income funds for any such claims until after the claim has been duly filed with and audited and approved by the state board of examiners."

79-1403. (1924) Income and interest moneys to be first exhausted in payment of claims. In the payment of claims presented by a state institution entitled to interest and income from land grants or moneys arising therefrom, no warrant shall be drawn against the appropriation made by the state out of the general fund for the maintenance of the institution filing the claim until interest and income moneys, insofar as they are available for the payment of the items in the claim, are exhausted.

History: En. Sec. 3, Ch. 120, L. 1909; re-en. Sec. 1924, R. C. M. 1921; amd. Sec. 3, Ch. 89, L. 1961; amd. Sec. 25, Ch. 147, L. 1963.

Amendments

The 1961 amendment completely re-wrote and rearranged the language. For section prior to amendment, see parent volume.

The 1963 amendment substituted "moneys" for "funds" or "fund" in two places; and made minor changes in phraseology.

Repealing Clause

Section 4 of Ch. 89, Laws 1961 read "Sections 79-1404 and 79-1405, Revised Codes of Montana, 1947, are repealed."

79-1404. (1925) Repealed.

Repeal

This section (Sec. 4, Ch. 120, L. 1909), relating to quarterly statement of ex-

penses and disbursements made on account of federal funds, was repealed by Sec. 4, Ch. 89, Laws 1961.

79-1405. (1926) Repealed.

Repeal

This section (Sec. 5, Ch. 120, L. 1909), relating to biennial statement of receipts

and expenditures of state educational institutions, was repealed by Sec. 4, Ch. 89, Laws 1961.

CHAPTER 18—GENERAL REFUNDING ACT APPLICABLE TO ALL OUTSTANDING BONDS

Section 79-1802. Character of bonds—amortization or serial.

79-1802. Character of bonds—amortization or serial. All refunding bonds or debentures issued by the state board of examiners under the provisions of this act shall be either amortization bonds, as defined by the statutes of the state, or serial bonds. Each issue of refunding bonds or debentures shall bear upon their face such statement as may be necessary to show that they are refunding bonds or debentures and the bonds or debentures which are issued to refund. Each bond and debenture shall bear the signature of each member of the state board of examiners and shall have affixed thereto the great seal of the state of Montana. Each serial bond thereof shall have coupons attached thereto showing the semi-annual payments due thereon, which coupons shall bear the signature of each member of the state board of examiners. The state board of examiners shall prescribe all other details for the form of the bonds or debentures, notice and time of sale. They shall be registered in the office of the state treasurer in a book to be provided for that purpose.

History: En. Sec. 2, Ch. 5, L. 1945; amd. Sec. 11, Ch. 260, L. 1959.

Amendment

The 1959 amendment substituted "bear

the signature of each member" for "shall be signed by the members" and substituted "shall bear the signature" for "may be signed with the facsimile signature."

CHAPTER 19—REVENUE BOND REFINANCING ACT OF 1937

Section 79-1905. Terms of refunding bonds.

79-1905. Terms of refunding bonds. The refunding bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding the period of usefulness of the enterprise, as determined by the governing body in its discretion, nor in any event exceeding forty years from their respective dates, may bear interest at such rate or rates not exceeding the maximum rate of interest borne by the notes, bonds, or other obligations refinanced thereby, may be in such denomination or denominations, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, with or without a premium, may be declared or become due before the maturity date thereof, may provide for the replacement of mutilated, destroyed, stolen, or lost bonds, may be authenticated in such manner and upon compliance with such conditions, and may contain such other terms and covenants, as may be provided by resolution or resolutions of the governing body of the municipality. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all refunding bonds shall at all times be, and shall be treated as, fully negotiable within the meaning of and for the purposes of the Uniform Commercial Code—Investment Securities. [Effective January 1, 1965.]

History: En. Sec. 5, Ch. 121, L. 1937; amd. Sec. 11-153, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted “fully

negotiable within the meaning of and for the purposes of the Uniform Commercial Code—Investment Securities” at the end of the section for “negotiable instruments for all purposes.”

CHAPTER 20—BOND VALIDATING ACT

Section 79-2001. Short title of act.

79-2002. Definitions.

79-2003. Validation of bonds heretofore issued.

79-2004. Act does not apply to pending actions.

79-2001. Short title of act. This act may be cited as “The 1963 Bond Validating Act.”

History: En. Sec. 1, Ch. 100, L. 1963.

Compiler's Note

Chapter 100 of Laws 1963 was substituted for Ch. 19, Laws 1961 and given the same section numbers as it is, except for section 79-2004, almost identical with the 1961 law. Other similar laws that have been previously published here include: Laws 1955, Ch. 5; Laws 1957, Ch. 4; Laws 1959, Ch. 16.

Title of Act

An act validating, ratifying, approving and confirming bonds and other instruments or obligations, heretofore issued by public bodies of this state, and all proceedings heretofore taken by such public bodies, to authorize and issue such bonds, instruments and other obligations, however described, and providing that this act may be cited as “The 1963 Bond Validating Act”; containing a repealing clause and providing an effective date.

79-2002. Definitions. The following terms, wherever used or referred to in this act, shall have the following meanings:

(1) The term "public body" shall include a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other political or governmental subdivision of the state of Montana, and shall also include the state board of education, the state board of examiners, the state water conservation board, the state highway commission, or any other governmental agency of this state.

(2) The term "bonds" shall include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on specific revenues, income or property of a public body, including all instruments or obligations payable from a special fund.

History: En. Sec. 2, Ch. 100, L. 1963.

79-2003. Validation of bonds heretofore issued. All bonds heretofore issued for any of the purposes for which bonds may be issued by any public body of this state and all proceedings heretofore taken for the authorization and issuance of bonds by such public body, and the sale, exchange, execution and delivery thereof, are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power (other than constitutional) of such public body, or the governing board or commission or officers thereof, to authorize and issue such bonds, or to sell, exchange, execute or deliver the same, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings or in such sale, exchange, execution or delivery, and bonds of such public bodies, whether heretofore issued or hereafter issued under the authority of proceedings heretofore taken, are and shall be binding, legal, valid and enforceable obligations of such political body.

History: En. Sec. 3, Ch. 100, L. 1963.

79-2004. Act does not apply to pending actions. This act shall not apply to or affect any action or appeal instituted on or before January 1, 1963, in which the validity of any such proceedings or of any such bonds is at issue.

History: En. Sec. 4, Ch. 100, L. 1963.

Repealing Clause

Section 5 of Ch. 100, Laws 1963 repealed all acts and parts of act in conflict therewith.

Effective Date

Section 6 of Ch. 100, Laws 1963 provided that the act should be in force and effect from and after its passage and approval. Approved March 1, 1963.

CHAPTER 21—FLOOD CONTROL FUNDS—DISPOSAL

Section 79-2101. Moneys received from federal government under flood control act—distribution to counties.

79-2102. Expenditure of funds by counties.

79-2101. Moneys received from federal government under flood control act—distribution to counties. All moneys received or hereafter to be received by the state of Montana from the secretary of the treasury of the United States, under and by virtue of the Flood Control Act of 1954, under title thirty-three (33) United States Code annotated section 701-c-3, or

which are now held in suspense accounts within the state of Montana, shall be distributed by the state to the county treasurers of the counties of the state of Montana wherein the flood control land is situated.

History: En. Sec. 1, Ch. 156, L. 1959.

Title of Act

An act relating to the distribution of moneys received by the state of Montana under and by virtue of the Flood Control Act of 1954 under title thirty-three (33) United States Code annotated section 701-c-3; providing for the distribution of such moneys by the state to the counties of Montana wherein such flood control land is situated; providing the counties receive-

ing such moneys shall expend fifty per cent (50%) thereof for the benefit of the county common schools in the county wherein such flood control land is situated and fifty per cent (50%) thereof for the benefit of the general public roads in the county wherein such flood control land is situated; providing and designating the funds into which such moneys shall be distributed by the county concerned; providing for a repealing clause; and providing for an effective date of this act.

79-2102. Expenditure of funds by counties. All moneys received or to be received by the county treasurers of the counties of the state of Montana wherein such flood control land is situated shall be deposited in the funds designated as the county common school tax fund and the general public road fund, and shall be expended as follows:

Fifty per cent (50%) of all moneys received or to be received shall be expended for the benefit of the county common schools in the county concerned, and fifty per cent (50%) of all moneys received or to be received shall be expended for the benefit of the general public roads in the county concerned.

History: En. Sec. 2, Ch. 156, L. 1959.

Repealing Clause

Section 3 of Ch. 156, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 156, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 7, 1959.

TITLE 80—STATE INSTITUTIONS

- Chapter 1. Montana state school for the deaf and blind, 80-108.
2. Montana state tuberculosis sanitarium, 80-201, 80-206, 80-207, 80-209, 80-210.1.
 3. Veterans' home, 80-302, 80-308, 80-310, 80-311, 80-313, 80-316.
 4. Farmers' institutes, Repealed—Section 1, Chapter 190, Laws of 1959.
 7. The state prison, 80-702 to 80-705, 80-707, 80-707.1 to 80-707.5, 80-711, 80-719, 80-720, 80-731, 80-732, 80-738, 80-740, 80-743, 80-745, 80-748.
 8. Montana state industrial school, 80-806, 80-809, 80-816, 80-818 to 80-820.
 9. State vocational school for girls, 80-902, 80-911, 80-920, 80-922 to 80-924.
 11. Miscellaneous provisions applicable to state institutions, 80-1101.
 12. State department of public institutions, 80-1201 to 80-1212.
 13. Collection of costs of support of inmates and patients, 80-1301 to 80-1306.

CHAPTER 1—MONTANA STATE SCHOOL FOR THE DEAF AND BLIND

Section 80-108. Admission of nonresident children and advance payment of cost—Indian children.

80-108. Admission of nonresident children and advance payment of cost—Indian children. Deaf and blind children, who are not residents of the state of Montana, upon application being made therefor, may be admitted to the school, subject to all eligibility requirements prescribed for children who are residents of the state; provided that for each such nonresident child there shall be paid to the school in advance a sum of money the amount of which shall be determined by a careful estimate of the whole per capita cost of maintaining the school during the year immediately preceding the date of the application; and provided further that no nonresident child shall be admitted to the school except when the full capacity thereof is not required for children who are residents of the state. Indian children who are wards of the United States and Montana residents shall be eligible to, and shall be admitted to such school on the same terms as residents. The school for the deaf and blind is hereby authorized to collect reimbursement from the United States government for expenses incurred in providing services for Indian children who are wards of the United States government.

History: En. Sec. 7, Ch. 182, L. 1943; amd. Sec. 1, Ch. 194, L. 1953; amd. Sec. 1, Ch. 182, L. 1957.

Amendment

The 1957 amendment inserted the words "and Montana residents" in the second sentence and substituted a period and the third sentence for a former proviso clause of the second sentence which read "provided, however, that the school for the deaf and blind children shall make claim

to and be entitled to receive reimbursement from the United States government for the care of such Indian children who are wards on the same basis and at the same rate as charges are made to non-residents admitted to said school."

Repealing Clause

Section 2 of Ch. 182, Laws 1957 repealed all acts and parts of acts in conflict therewith.

80-115. Repealed.

Repeal

This section (Sec. 13, Ch. 182, L. 1943), relating to the deaf and blind school fund,

was repealed by Sec. 242, Ch. 147, Laws 1963.

CHAPTER 2—MONTANA STATE TUBERCULOSIS SANITARIUM

Section 80-201.	Establishment and objects.
80-206.	Superintendent.
80-207.	Duties of superintendent.
80-209.	Medical assistants and examining physicians.
80-210.1.	Admission of patients to sanitarium.

80-201. (1511) Establishment and objects. There is hereby established a state hospital to be known as the "Montana State Tuberculosis Sanitarium" for the treatment of tuberculosis and also what is commonly called "miner's consumption," which may also be utilized for geriatric and senile patients, the location thereof to be determined as hereinafter specified.

History: En. Sec. 1, Ch. 125, L. 1911;
re-en. Sec. 1511, R. C. M. 1921; amd. Sec.
1, Ch. 94, L. 1961.

Amendment

The 1961 amendment inserted the words
"which may also be utilized for geriatric
and senile patients."

80-202 to 80-205. (1512 to 1515) Repealed.**Repeal**

These sections (Secs. 2 to 5, Ch. 125, L. 1911), relating to the executive board of the sanitarium and to selection of a site

for and construction of the sanitarium,
were repealed by Sec. 82, Ch. 266, Laws
1963.

80-206. (1516) Superintendent. The administrative head of the sanitarium is the superintendent, who shall be a well-educated physician, legally qualified to practice medicine in Montana, with an experience of at least six years in the actual practice of his profession, including at least a year's actual experience in a general hospital, and reasonable experience in the treatment of tuberculosis.

History: En. Sec. 6, Ch. 125, L. 1911;
re-en. Sec. 1516, R. C. M. 1921; amd. Sec.
47, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "The administrative head of the sanitarium is the superintendent" for "The governor, by

and with the advice and consent of the state board of examiners, shall appoint a president of said sanitarium" at the beginning of the section; and deleted a second sentence which read, "The said president, may be discharged or suspended at any time by the state board of examiners in its discretion."

80-207. (1517) Duties of superintendent. The superintendent shall:

1. Appoint such employees as are necessary and proper for a due administration of the affairs of such institution, prescribe their duties and offices, and, subject to the approval of the state department of public institutions, fix their compensation within the appropriation fixed therefor.

2. Oversee and secure the individual treatment and personal care of each and every patient in the sanitarium while resident therein, and keep a proper oversight of all the inhabitants thereof.

3. Have the general superintendence of the buildings and grounds, with their furnishing and fixtures, and the selection and control of all persons employed in and about the same.

4. Give from time to time such orders and instructions as he may deem best calculated to induce good conduct, fidelity, and economy in any department for the treatment of patients.

5. Maintain a salutary discipline among all employees, patients, and inmates of the sanitarium, and enforce strict compliance with his instruc-

tions and obedience to all the rules and regulations of the sanitarium. He shall, under the supervision and control of the state department of public institutions, discharge such patients as are sufficiently restored to health.

6. Cause full and fair accounts and records of the conditions and prospects of the patients to be kept regularly from day to day, in books provided for that purpose.

7. Conduct the official correspondence of the sanitarium, and keep a record or copy of letters written and files of all letters received.

History: En. Sec. 7, Ch. 125, L. 1911; re-en. Sec. 1517, R. C. M. 1921; amd. Sec. 48, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "superintendent" for "president" in the preliminary paragraph; substituted "state department of public institutions" for "state board of examiners" in paragraph 1 and for "executive board" in paragraph 5; de-

leted from paragraph 6 clauses which read, "and see that such accounts and records shall be in condition to be fully and properly inspected by the executive board at each regular meeting thereof; and that the principal facts and results, with a report thereon, shall be presented to the executive board at each regular meeting of said board"; and deleted a paragraph 8, for text of which see parent volume.

80-208. (1518) Repealed.

Repeal

This section (Sec. 8, Ch. 125, L. 1911), relating to the secretary and treasurer of

the state tuberculosis sanitarium, was repealed by Sec. 82, Ch. 266, Laws 1963.

80-209. (1519) Medical assistants and examining physicians. All medical assistants shall be appointed by the superintendent. No medical assistant shall be appointed who is not a well-educated physician, legally qualified to practice medicine in Montana, and with an experience of at least two years in the actual practice of his profession, including at least one year's actual experience in a general hospital. The superintendent shall appoint, in all of the first, second and third-class cities of the state, reputable physicians, citizens of the state of Montana, who shall examine all persons applying for admission to said sanitarium for treatment. There shall be not less than one nor more than four such examining physicians appointed in cities of the first class, and not more than two in cities of the second and third class. Said examining physicians shall have been in the regular practice of their profession for at least five years, and shall be skilled in the diagnosis and treatment of diseases. Their fee or compensation, for each patient examined, shall not exceed three dollars.

History: En. Sec. 9, Ch. 125, L. 1911; re-en. Sec. 1519, R. C. M. 1921; amd. Sec. 49, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "the superintendent" for "the executive board" at the end of the first sentence and at the beginning of the third sentence.

80-210. (1520) Repealed.

Repeal

This section (Sec. 10, Ch. 125, L. 1911; Sec. 1, Ch. 26, Ex. L. 1919; Sec. 1, Ch. 4, L. 1927; Sec. 1, Ch. 142, L. 1953), relating

to the admission of patients to the sanitarium, was repealed by Sec. 2, Ch. 189, Laws 1959, effective March 7, 1959.

80-210.1. Admission of patients to sanitarium. The superintendent of the sanitarium is hereby given the power and authority to receive any person as a patient who is suffering from tuberculosis or what is commonly called miner's consumption. An applicant for admission to the

sanitarium need not be a citizen or resident of the state of Montana for any length of time before he can be admitted as a patient. No person shall be admitted as a patient without certification by an examining licensed physician and surgeon that the applicant is suffering from tuberculosis or miner's consumption, such certification being in form and containing such information as determined necessary by the superintendent of the sanitarium. Applications with their certification shall be submitted to the health officer of the county where application is made or directly to the superintendent. Upon acceptance of a patient for admission to the sanitarium, the superintendent shall notify the referring physician and the state board of health. The medical staff of the sanitarium shall be the sole judge of who is afflicted with tuberculosis that may benefit by admission to the sanitarium.

Name as per Act
 Admission to the sanitarium shall be made in the order in which the name of the applicant shall appear upon an application book to be kept by the superintendent. An applicant's name may only be entered if his application is accompanied by the certificate of an examining physician. Residents of Montana shall be entitled to admission to the sanitarium before applicants who are not residents. Provided, however, that where the next patient in order is a man and the only accommodations available in the sanitarium are for women or children, then women and children shall be admitted in their proper order and vice versa.

In the event there are adequate facilities available at the Montana state tuberculosis sanitarium, the sanitarium may also accept geriatric and senile patients. Applications for admission, laws, rules and regulations pertaining to the care and custody of geriatric and senile patients in other state institutions shall apply to said geriatric and senile patients at the Montana state tuberculosis sanitarium.

History: En. Sec. 1, Ch. 189, L. 1959; amd. Sec. 2, Ch. 94, L. 1961; amd. Sec. 50, Ch. 266, L. 1963.

Title of Act

An act providing for the admission of patients to the Montana tuberculosis sanitarium by providing that any person may be admitted who is suffering from tuberculosis or miner's consumption; providing for applications and order of admission; repealing section 80-210, Revised Codes of Montana, 1947, as amended by chapter 142, Laws of 1953 and all acts and parts of acts in conflict therewith; and providing an effective date of this act.

Amendments

The 1961 amendment added the last paragraph.

The 1963 amendment substituted "The superintendent" for "The executive board" at the beginning of the section; and deleted "the executive board of" before "the sanitarium" in the first sentence of the last paragraph.

Repealing Clause

Section 2 of Ch. 189, Laws 1959 read "That section 80-210, Revised Codes of Montana, 1947, as amended by chapter 142, Laws of 1953, and all acts and parts of acts in conflict herewith are hereby repealed."

Effective Date

Section 3 of Ch. 189, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 7, 1959.

80-211 to 80-213. (1521 to 1523) Repealed.

Repeal

These sections (Secs. 11 to 13, Ch. 125, L. 1911; Sec. 1, Ch. 186, L. 1921), relating to support of patients at the sanitarium, were repealed by Sec. 10, Ch. 213, Laws

1963. Sections 51 to 53, Ch. 266, Laws 1963, purported to amend these sections; however, under the rule of section 43-515, the purported amendments were void and did not revive the sections.

80-214. (1524) Repealed.**Repeal**

This section (Sec. 14, Ch. 125, L. 1911), relating to the duties of the state board of

examiners with respect to the sanitarium, was repealed by Sec. 82, Ch. 266, Laws 1963.

80-216, 80-217. Repealed.**Repeal**

These sections (Secs. 1, 2, Ch. 76, L. 1947), relating to a land grant for a sani-

tarium for Indians, were repealed by Sec. 82, Ch. 266, Laws 1963.

CHAPTER 3—VETERANS' HOME

Section 80-302. State department of public institutions authorized to receive and disburse moneys.

80-308. Superintendent—subordinate officers.

80-310. Who are eligible to admission.

80-311. Admission of wives or widows.

80-313. Department may accept donations.

80-316. Insane inmates.

80-301. (1526) Repealed.**Repeal**

This section (Sec. 1, p. 93, L. 1897), relating to federal aid to the veterans' home,

was repealed by Sec. 82, Ch. 266, Laws 1963.

80-302. (1527) State department of public institutions authorized to receive and disburse moneys. The state department of public institutions is hereby empowered and directed to receive and receipt for any and all moneys that may become due the state by reason of any act of Congress, and to turn the same into the state treasury for the use and benefit of the Montana veterans' home, to be disbursed and accounted for in the same manner as other money appropriated out of the state treasury for the maintenance of said home.

History: En. Sec. 1, p. 93, L. 1897; re-en. Sec. 1282, Rev. C. 1907; re-en. Sec. 1527, R. C. M. 1921; amd. Sec. 13, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" for "state auditor," "any act of Congress" for "said act of Congress," and "Montana veterans' home" for "state soldiers' home."

80-304 to 80-307. (1529 to 1532) Repealed.**Repeal**

These sections (Secs. 2511 to 2514, Pol. C. 1895; Secs. 1284 to 1287, Rev. C. 1907; Sec. 1, Ch. 23, L. 1909; Sec. 1, Ch. 20, L. 1911; Secs. 1529 to 1532, R. C. M. 1921;

Sec. 1, Ch. 149, L. 1925; Sec. 1, Ch. 82, L. 1949), relating to the board of managers of the veterans' home, were repealed by Sec. 82, Ch. 266, Laws 1963.

80-308. (1533) Superintendent — subordinate officers. The superintendent, who is the administrative head of the veterans' home, shall be a resident of the state of Montana, and shall have served in the armed forces of the United States during a time when the United States of America was involved in war or a state of national emergency, and shall have received an honorable discharge therefrom.

All subordinate officials and employees of the home shall preferably be selected from residents of the state who have served in the armed

forces of the United States and have been honorably discharged therefrom.

History: En. Sec. 2515, Pol. C. 1895; re-en. Sec. 1288, Rev. C. 1907; amd. Sec. 2, Ch. 23, L. 1909; re-en. Sec. 1533, R. C. M. 1921; amd. Sec. 1, Ch. 126, L. 1925; amd. Sec. 1, Ch. 156, L. 1931; amd. Sec. 2, Ch. 82, L. 1949; amd. Sec. 1, Ch. 118, L. 1955; amd. Sec. 14, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "The superintendent, who is the administrative head of the veterans' home" at the be-

ginning of the section for "The board of managers shall appoint a commandant of the soldiers' home, who shall receive a salary not to exceed four hundred dollars (\$400.00) per month, who"; substituted "armed forces" in the first paragraph for "army, navy, air force or marine corps" and in the present second paragraph for "army or navy"; and deleted the former second, fourth, and fifth paragraphs, for text of which see parent volume.

80-309. (1534) Repealed.

Repeal

This section (Sec. 2516, Pol. C. 1895), relating to records of the board of man-

agers, was repealed by Sec. 82, Ch. 266, Laws 1963.

80-310. (1535) Who are eligible to admission. Any person who served in the armed forces of the United States during time of war or declared national emergency, or who while a citizen of the United States, served in the armed forces of any of the allies of the United States and has returned to and lives in Montana, or during any troubles arising or growing out of any such war or wars, and has received honorable discharge therefrom, who at the time of admission is an invalid by reason of disease contracted, wounds received, old age, or by reason of other disability, and who has become unable to earn a livelihood by reason thereof, shall be eligible to admission to the benefits of the home under the rules and regulations prescribed by the state department of public institutions, on the certificate of disability by a county commissioner and the county physician of the county in which the applicant may reside; and the transportation of such applicant to said veterans' home shall be a proper county charge, and be paid by said county if the applicant is unable to pay the same; provided, that the benefits of said home shall not be extended to anyone who has not resided within the state of Montana for a period of one (1) year next preceding the date of his application, or to anyone who has not resided within the county from which he asks to be sent to the home for the period of three (3) months from the date of his application, nor to anyone convicted of a felony or of a crime involving moral turpitude, nor shall anyone who has been an habitual drunkard be received without sufficient evidence of subsequent good conduct and reformation of character as may be satisfactory to said state department of public institutions.

History: En. Sec. 1, p. 50, L. 1899; re-en. Sec. 1290, Rev. C. 1907; amd. Sec. 1, Ch. 93, L. 1913; amd. Sec. 1, Ch. 41, L. 1919; re-en. Sec. 1535, R. C. M. 1921; amd. Sec. 1, Ch. 60, L. 1931; amd. Sec. 1, Ch. 81, L. 1945; amd. Sec. 3, Ch. 82, L. 1949; amd. Sec. 1, Ch. 154, L. 1955; amd. Sec. 15, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "Any

person who served in the armed forces" at the beginning of the section for "Any soldier, sailor, marine, or airman who served in the army, navy, or air force"; substituted "armed forces" before "of any of the allies" for "army or navy or other branch of the military establishment"; substituted "prescribed by the state department of public institutions" after "rules and regulations" for "prescribed by the board of managers thereof"; de-

leted the words "and be provided with agricultural facilities under competent management" which preceded "on the certificate of disability"; substituted "said

veterans' home" for "said soldiers' home"; and substituted "state department of public institutions" for "board of managers" at the end of the section.

80-311. (1536) Admission of wives or widows. The state department of public institutions is authorized and empowered to admit to the privileges of the home under such rules as it may prescribe, the wives or widows of persons who have served in the armed forces who are inmates or who may be or may have been eligible to admission as inmates and who were married to such persons; provided that no woman be admitted who has not attained the age of fifty (50) years.

History: En. Sec. 1, Ch. 87, L. 1903; re-en. Sec. 1292, Rev. C. 1907; amd. Sec. 1, Ch. 93, L. 1913; re-en. Sec. 1536, R. C. M. 1921; amd. Sec. 2, Ch. 126, L. 1925; amd. Sec. 1, Ch. 12, L. 1935; amd. Sec. 16, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" and "it" for "board of managers of the soldiers' home" and "the board"; and substituted "persons who have served in the armed forces" and "persons" for "soldiers, sailors or marines" in both places.

80-312. (1537) Repealed.

Repeal

This section (Sec. 2518, Pol. C. 1895), relating to selection of the site of the

veterans' home, was repealed by Sec. 82, Ch. 266, Laws 1963.

80-313. (1538) Department may accept donations. The state department of public institutions shall have the power, on behalf of the state, to accept donations of land, money, or other valuables by gift, bequest, or otherwise. All titles to land and improvements thereon shall be vested in the name of the state for the use of said veterans' home, so long as the same may be necessary, to revert to the state when the necessity for such home no longer exists.

History: En. Sec. 2519, Pol. C. 1895; re-en. Sec. 1293, Rev. C. 1907; re-en. Sec. 1538, R. C. M. 1921; amd. Sec. 17, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "The

state department of public institutions" at the beginning of the section for "Said board of managers"; and substituted "veterans' home" for "soldiers' home" in the second sentence.

80-314, 80-315. (1539, 1540) Repealed.

Repeal

These sections (Sec. 2520, Pol. C. 1895; Sec. 1294, Rev. C. 1907; Sec. 3, Ch. 23, L. 1909; Secs. 1539, 1540, R. C. M. 1921),

relating to the board of managers of the veterans' home, were repealed by Sec. 82, Ch. 266, Laws 1963.

80-316. (1541) Insane inmates. In case any member of the Montana veterans' home shall become insane, and shall be so adjudged according to the law, and shall be sent to the state hospital, such insane inmate shall not thereby lose his connection with said Montana veterans' home; and the proper officer of said veterans' home shall draw from the general government any proportion of the cost of maintaining such insane inmate to which such said veterans' home is entitled by law.

History: En. Sec. 2524, Pol. C. 1895; 1541, R. C. M. 1921; amd. Sec. 18, Ch. 266, re-en. Sec. 1298, Rev. C. 1907; re-en. Sec. L. 1963.

Amendment

The 1963 amendment substituted "veterans' home" for "soldiers' home" in four

places; and substituted "the state hospital" for "any one of the asylums for the insane."

80-317 to 80-319. (1542 to 1544) Repealed.**Repeal**

These sections (Secs. 2525 to 2527, Pol. C. 1895), relating to contracts, expendi-

tures, and inspection of the veterans' home, were repealed by Sec. 82, Ch. 266, Laws 1963.

80-321, 80-322. (1546, 1546.1) Repealed.**Repeal**

These sections (Sec. 1, Ch. 33, L. 1905; Sec. 1, Ch. 30, L. 1909; Sec. 3, Ch. 126, L. 1925; Sec. 1, Ch. 59, L. 1935; Sec. 1, Ch. 57, L. 1945; Sec. 232, Ch. 147, L.

1963), relating to the chaplain of the veterans' home, and to escheated funds left by inmates, were repealed by Sec. 82, Ch. 266, Laws 1963.

CHAPTER 4—FARMERS' INSTITUTES

(Repealed—Section 1, Chapter 190, Laws of 1959)

80-401 to 80-404. (1576 to 1579) Repealed.**Repeal**

These sections (Secs. 1, 4, 5, pp. 55, 56, L. 1901; Secs. 1, 2, 5, Ch. 105, L. 1903; Sec. 1, Ch. 8, L. 1909; Sec. 1, Ch.

133, L. 1921), relating to farmers' institutes, were repealed by Sec. 1, Ch. 190, Laws 1959.

CHAPTER 7—THE STATE PRISON

Section 80-702.	State department of public institutions has control of grounds, etc.
80-703.	Officers of board.
80-704.	Duty of secretary.
80-705.	Warden.
80-707.	Duties of warden.
80-707.1.	Appointment of custodial officers.
80-707.2.	Qualifications and duties.
80-707.3.	Probationary training.
80-707.4.	Promotions—probationary period.
80-707.5.	Suspension, demotion and discharge.
80-711.	Musical director at state prison—salary.
80-719.	Labor of convicts.
80-720.	Employment of convicts.
80-731.	Labor of inmates of state penitentiary and Montana state hospital may be used for construction and repair of buildings.
80-732.	Escape of convicts.
80-738.	Limitations on convict punishment.
80-740.	Good behavior allowance for inmates in certain employments.
80-743.	County jails may be made prisons.
80-745.	Insane convicts.
80-748.	Compensation of sheriffs.

80-702. (12435) State department of public institutions has control of grounds, etc. The state department of public institutions has full control of the state prison grounds, buildings, prison labor and prison property; has power to purchase or cause to be purchased, all needed commissary supplies, all raw material and tools necessary for any manufacturing purposes carried on at said prison; and to sell all manufactured articles, and collect the money for the same. The department has power to make all needful rules and regulations in regard to the management of the

prison, the discipline of the convicts and the conduct and compensation of the guards and assistants.

History: En. Sec. 2951, Pen. C. 1895; re-en. Sec. 9717, Rev. C. 1907; re-en. Sec. 12435, R. C. M. 1921; amd. Sec. 31, Ch. 266, L. 1963.

state department of public institutions" at the beginning of the section and "The department" at the beginning of the second sentence for "The board of state prison commissioners" and "The board."

Amendment

The 1963 amendment substituted "The

80-703. (12436) Officers of board. The governor is the president, and the secretary of state secretary of the board of state prison commissioners; and any two thereof are a quorum, with full power to transact any business that may be required of such board.

History: En. Sec. 2952, Pen. C. 1895; re-en. Sec. 9718, Rev. C. 1907; re-en. Sec. 12436, R. C. M. 1921; amd. Sec. 32, Ch. 266, L. 1963.

Amendment

The 1963 amendment inserted "of state prison commissioners" after "the board."

80-704. (12437) Duty of secretary. It is the duty of the secretary to keep, or cause to be kept, a full and complete account in a book or books to be kept for that purpose, of all the transactions and proceedings of the board of state prison commissioners.

History: En. Sec. 2953, Pen. C. 1895; re-en. Sec. 9719, Rev. C. 1907; re-en. Sec. 12437, R. C. M. 1921; amd. Sec. 33, Ch. 266, L. 1963.

Amendment

The 1963 amendment added "of state prison commissioners" at the end of the section.

80-705. (12438) Warden. The warden of the state prison is the administrative head of the prison and shall be a person trained through education and experience in a managerial capacity in a penal institution. The salary of the warden shall be not less than eight thousand four hundred dollars (\$8,400.00) per year, payable in monthly installments.

The warden shall have a place of residence at the prison for himself and his family, free of charge, and he shall receive all utilities and other necessary items of expense incident to the maintenance thereof. Food and other provisions available at the prison commissary shall be furnished without cost to the warden for consumption and use at said residence.

History: En. Sec. 2954, Pen. C. 1895; re-en. Sec. 9720, Rev. C. 1907; amd. Sec. 1, Ch. 11, L. 1913; re-en. Sec. 12438, R. C. M. 1921; amd. Sec. 1, Ch. 61, L. 1957; amd. Sec. 1, Ch. 58, L. 1959; amd. Sec. 34, Ch. 266, L. 1963.

Amendments

The 1957 amendment raised the salary of the warden from \$4,000 to \$7,500 per year and the monthly installment payment from \$333.33 to \$625.

The 1959 amendment inserted "subject to the approval of the board of state prison commissioners" after "governor" in the former first sentence; deleted a former second sentence reading, "The tenure of office of the appointee shall be for a period of four (4) years from the date of appointment and until his successor has been ap-

pointed and qualified"; inserted a sentence now appearing as the first sentence; increased the warden's salary from \$7,500 to \$8,400; increased the time of notice specified in the second sentence of the former third paragraph from five to ten days; and added two paragraphs reading as follows:

"The board shall conduct an open hearing to determine whether the warden should be removed. They shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers and other evidence at such hearing, and for that purpose to issue subpoenas and cause the same to be served and executed in any part of the state. The warden shall be entitled to be confronted with the witnesses against him and he, or his counsel,

shall have an opportunity to cross-examine the same, and to introduce testimony in his own behalf. Within fifteen (15) days after such hearing the board shall render its decision in writing. If the effect of the decision is to exonerate the warden, he shall be entitled to reimbursement for any loss in salary caused by the charges against him.

"Compulsory retirement age for the warden shall be sixty-five (65). Upon reaching compulsory retirement age, however, the warden in office may be retained beyond that age by the state board of prison commissioners on a year to year basis."

The 1963 amendment deleted a first sentence reading, "A warden of the state prison shall be appointed by the governor subject to approval of the board of state prison commissioners, and such appointment must be transmitted to and approved by the senate"; inserted the words "is the administrative head of the prison and" in the present first sentence; deleted from

the end of the second paragraph a clause reading, "provided that an accounting of such food and provisions so consumed, shall be made annually to the state board of prison commissioners"; deleted the former third paragraph, for text of which see parent volume and 1959 amendment note above; and deleted the two paragraphs added by the 1959 amendment.

Repealing Clauses

Section 2 of Ch. 61, Laws 1957 and Sec. 2 of Ch. 58, Laws 1959 repealed all acts or parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 61, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 1, 1957.

Section 3 of Ch. 58, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved February 26, 1959.

80-706. (12439) Repealed.

Repeal

This section (Sec. 1, Ch. 71, L. 1959), relating to the appointment and removal

of guards and other assistants, was repealed by Sec. 82, Ch. 266, Laws 1963.

80-707. (12440) Duties of warden. The warden has the general superintendence of prison discipline and prison labor; must keep, or cause to be kept, a book wherein shall be recorded the name, age, sex, occupation, place of birth, where sent from, the crime charged, date of incarceration, and the expiration of the term for which the prisoners therein confined were sentenced, and shall make out a correct monthly report of the same, and file such report with the secretary of the board of state prison commissioners; and shall securely and carefully file in his office all commitments of prisoners that may be sent to the state prison, and keep, or cause to be kept, a correct account, and certify any mileage that may be due to any sheriff or deputy sheriff for conveying prisoners to the state prison.

History: En. Sec. 2956, Pen. C. 1895; re-en. Sec. 9722, Rev. C. 1907; re-en. Sec. 12440, R. C. M. 1921; amd. Sec. 35, Ch. 266, L. 1963. Cal. Pen. C. Sec. 1578.

Amendment

The 1963 amendment inserted "of state prison commissioners" after "secretary of the board."

80-707.1. Appointment of custodial officers. In the performance of his duties of superintending prison discipline and prison labor, the warden shall be assisted by a staff of custodial officers, to be composed of probationary correctional officers, correctional officers, lieutenants and captains.

History: En. Sec. 1, Ch. 242, L. 1959; amd. Sec. 35, Ch. 266, L. 1963.

Title of Act

An act providing for the appointment of custodial officers to assist the warden in the performance of his duties in superintending prison discipline and prison

labor; providing for the supervision and control over such employees by the warden; providing for various ranks within such class of employees; providing for a period of probationary service and training in the respective ranks; providing for the suspension, demotion and discharge of such employees, and for an appeal from

any such action to the board of state prison commissioners; repealing all acts or parts of acts in conflict herewith; and providing for the effective date of the act.

Amendment

The 1963 amendment deleted a second

sentence which read, "They shall be appointed by the warden, in such numbers as he may deem necessary, but subject to the approval of the board of state prison commissioners as to the number appointed."

80-707.2. Qualifications and duties. All custodial officers must be citizens of the United States and a resident of Montana for one year. Their duties, and the respective duties of the various ranks, shall be as outlined and defined in writing by the warden. They shall be under the general supervision and control of the warden at all times.

History: En. Sec. 2, Ch. 242, L. 1959.

80-707.3. Probationary training. Every person appointed to serve as a custodial officer, except those employed at the state prison at the time this act becomes effective, shall assume the rank of probationary correctional officer, and shall be placed under probationary training and service for a period of six (6) months. At the end of the six (6) months period, the warden must either promote such person to the rank of correctional officer, or discharge such person from service.

History: En. Sec. 3, Ch. 242, L. 1959.

80-707.4. Promotions—probationary period. All promotions and appointments to the rank of lieutenant or captain shall be made by the warden. All such promotions and appointments shall be made from the prison staff and on the basis of merit. All lieutenants and captains shall be placed under probationary training and service for a period of six (6) months. At the end of the six (6) months period, the warden may retain such person in such rank or reinstate him in his previous rank without prejudice.

History: En. Sec. 4, Ch. 242, L. 1959.

80-707.5. Suspension, demotion and discharge. Every person employed or appointed and designated as captain, lieutenant or correctional officer under and pursuant to the provisions of this act, except as above provided, shall continue in service and hold his position without demotion until suspended, demoted or discharged in the manner hereinafter provided, for one or more of the following causes:

(a) Conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the commencement of such employment;

(b) Gross neglect of duty or wilful violation or disobedience of orders or regulations;

(c) Drinking intoxicating liquor, or being under the influence thereof, while on duty;

(d) Sleeping while on duty;

(e) Incapacity, or partial incapacity, materially affecting the employee's ability to perform his official duties;

(f) Gross inefficiency in performing duties;

(g) Active participation in any political campaign by supporting or opposing, directly or indirectly, any political candidate, or contributing financially or otherwise, directly or indirectly, to the success or defeat of any political party or candidate;

(h) Wilful disobedience of rules and regulations governing the conduct and discipline of custodial officers.

Any charge brought against any such employee must be in writing and signed and sworn to by the person making the same. It shall be filed with the warden, and a copy of the charges shall be served upon the accused employee.

The warden shall make an investigation of any charge or charges against an accused employee, upon the filing thereof, and if he finds that any such charge is true, he may punish the offending party by reprimand, suspension without pay, demotion or dismissal, at the same time giving his reasons in writing to the board of state prison commissioners. Suspension shall be without pay and for a period not to exceed twenty (20) days. If the warden finds that such charges are false, he shall so notify the accused employee in writing.

Any employee who is so suspended, demoted or dismissed may appeal to the board of state prison commissioners by filing with such board a written request therefor within ten (10) days after he is notified of the warden's decision. It shall be the duty of the board of state prison commissioners, within thirty (30) days after the filing of such request, to conduct an open hearing upon said appeal. The board of state prison commissioners shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers and other evidence at such hearing, and for that purpose to issue subpoenas and cause the same to be served and executed in any part of the state. The accused employee shall be entitled to be confronted with the witnesses against him, and he, or his counsel, shall have an opportunity to cross-examine the same, and to introduce testimony and summon witnesses in his own behalf.

Within fifteen (15) days after such hearing the board of state prison commissioners shall render its decision in writing. It shall file the same in its office and with the warden, and shall serve a copy thereof upon the accused employee. If the effect of the decision is to exonerate the accused employee, he shall be entitled to reinstatement and to reimbursement for any loss in salary caused by the charges against him.

History: En. Sec. 5, Ch. 242, L. 1959; amd. Sec. 37, Ch. 266, L. 1963.

Amendment

The 1963 amendment inserted "of state prison commissioners" after "board" in four places in the three final paragraphs.

Repealing Clause

Section 6 of Ch. 242, Laws 1959 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 7 of Ch. 242, Laws 1959 read "This act shall be in full force and effect from and after July 1, 1960."

80-711. (12440.4) Musical director at state prison—salary. Such donations and the benefit to the state accruing in the reformation and education of prisoners should at all times be maintained by the state, if

possible, and therefore the warden is hereby empowered to appoint a suitable person to act in the capacity of musical director at the prison, who shall receive a salary of two thousand five hundred dollars (\$2,500.00) per year, payable monthly from funds available from interest accruing from the said trust fund, or from appropriations available.

History: En. Sec. 4, Ch. 180, L. 1935; amd. Sec. 38, Ch. 266, L. 1963.

den is hereby empowered" for "governor is hereby empowered, with the approval of the state board of prison commissioners."

Amendment

The 1963 amendment substituted "war-

80-716 to 80-718. (12443 to 12445) Repealed.

Repeal

These sections (Secs. 2957 to 2959, Pen. C. 1895), relating to the warden's resi-

dence and to expenditures for supplies for the prison, were repealed by Sec. 82, Ch. 266, Laws 1963.

80-719. (12446) Labor of convicts. The state department of public institutions may, in its discretion, cause the prisoners, or any number of them, to be employed in any mechanical pursuits, and at hard labor, and furnish any convicts thus employed with any materials that may be deemed necessary, in the same manner as is provided for the furnishing of supplies and stores to the state prison, and the department shall, in all respects, have the exclusive control of the employment of the convicts, and may from time to time employ them in such manner as, in its opinion, will best subserve the interest of the state and the welfare of the prisoners. But neither the department nor the warden must let by contract to any person the labor of any convict in the prison.

History: En. Sec. 2960, Pen. C. 1895; re-en. Sec. 9728, Rev. C. 1907; re-en. Sec. 12446, R. C. M. 1921; amd. Sec 39, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "The state department of public institutions" for "the department" in three places for "the board."

80-720. (12447) Employment of convicts. If, at any time, it would be to the interest of the state to employ any portion of the prisoners, either within or without the walls or enclosures of the state prison, either in improvement of the public grounds or buildings or otherwise where they may be profitably employed, the department of public institutions has power to so employ such labor; it must, in such case, direct the warden accordingly in writing. The department of public institutions may, upon recommendation of the warden of the Montana state prison, make payments of money to any inmate of the state prison as an incentive to satisfactorily perform his or her work in the various prison industries. It shall be the duty of the department of public institutions to authorize the payment of wages ranging from two cents (2¢) to fifty cents (50¢) per day depending on job grades. All jobs shall be graded according to the following criteria:

- (a) Knowledge
- (b) Skill
- (c) Physical effort
- (d) Responsibility for equipment and materials
- (e) Regard for safety of others
- (f) Working conditions

All wages paid hereunder shall be paid from the receipts from the sale of the products produced or manufactured by prison industries.

History: En. Sec. 2961, Pen. C. 1895; re-en. Sec. 9729, Rev. C. 1907; re-en. Sec. 12447, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1959; amd. Sec. 230, Ch. 147, L. 1963; amd. Sec. 40, Ch. 266, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 147, and once by Ch. 266. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, however, the compiler has made a composite section incorporating the changes made by both.

Amendments

The 1959 amendment added everything following the first sentence of this section.

Chapter 147, Laws 1963, substituted "the receipts from the sale of the products produced or manufactured by prison

industries" at the end of the section for "the 'industrial revolving fund' as established by section 94-35-152.13, Revised Codes of Montana, 1947."

Chapter 266, Laws 1963, deleted "the board is of the opinion that" before "it would be to the interest of the state" near the beginning of the section; substituted "the department of public institutions" for "it" in the latter part of the first sentence; deleted from the end of the first sentence the words "and cause a record of such order to be entered at length on the records of the board"; and substituted "the department of public institutions" for "the board" in the second and third sentences.

Repealing Clause

Section 2 of Ch. 14, Laws 1959 repealed all acts or parts of acts in conflict therewith.

80-721 to 80-724. (12447.1 to 12447.4) Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 152, L. 1927), relating to the operation of a fac-

tory for wearing apparel, were repealed by Sec. 1, Ch. 15, Laws 1959.

80-725 to 80-729. (12447.5 to 12447.9) Repealed.

Repeal

These sections (Secs. 1 to 5, Ch. 173, L. 1929), relating to the operation of a tan-

nery at the state prison, were repealed by Sec. 1, Ch. 15, Laws 1959.

80-730. (12447.10) Repealed.

Repeal

This section (Sec. 1, Ch. 196, L. 1931; amd. Sec. 1, Ch. 94, L. 1935), relating to

the manufacture of brick at the state prison, was repealed by Sec. 1, Ch. 15, Laws 1959.

80-731. (12447.11) Labor of inmates of state penitentiary and Montana state hospital may be used for construction and repair of buildings. The department of public institutions may use the labor of the male prisoners in the Montana state prison for construction or repair of buildings at the Montana state prison at Deer Lodge; and the department of public institutions may use the labor of the male inmates in the Montana state hospital for the construction and repair of buildings at the Montana state hospital at Warm Springs, Montana.

History: En. Sec. 2, Ch. 196, L. 1931; amd. Sec. 41, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "de-

partment of public institutions" for "board of prison commissioners" at the beginning of the section and for "board of commissioners for the insane" in the latter part of the section.

80-732. (12448) Escape of convicts. The warden and officers of the prison shall incur no forfeiture for the escape of any convict employed without the walls or inclosures of the prison by order of the department of public institutions, or going to or returning from such employment,

unless such escape should arise from neglect or violation of law, or the rules, regulations, or by-laws of the department of public institutions.

History: En. Sec. 2962, Pen. C. 1895; re-en. Sec. 9730, Rev. C. 1907; re-en. Sec. 12448, R. C. M. 1921; amd. Sec. 42, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "the department of public institutions" for "the board" in two places.

80-734. (12450) Repealed.

Repeal

This section (Sec. 2964, Pen. C. 1895), relating to money received for prison la-

bor, was repealed by Sec. 1, Ch. 15, Laws 1959.

80-735 to 80-737. (12451 to 12453) Repealed.

Repeal

These sections (Secs. 2965 to 2967, Pen. C. 1895), relating to the inspection of books and papers, to the admission of

federal prisoners, and to rules and regulations of the prison, were repealed by Sec. 82, Ch. 266, Laws 1963.

80-738. (12454) Limitations on convict punishment. No barbarous punishments, by whipping, showering, or otherwise, must be prescribed for convicts; nor shall convicts, as punishment, be deprived of the regular rations of food, and at the same time compelled to work the usual number of hours per day.

History: En. Sec. 2968, Pen. C. 1895; re-en. Sec. 9736, Rev. C. 1907; re-en. Sec. 12454, R. C. M. 1921; amd. Sec. 43, Ch. 266, L. 1963.

Amendment

The 1963 amendment deleted a first sentence which read, "Any person who violates any of the rules, regulations, or

by-laws of the prison, as adopted and published by the board, must be subject to such penalties as may be prescribed by the board, and proceeded against in such manner as may be prescribed by law and the rules of the board"; and substituted "for convicts" for "by the board" after "must be prescribed."

80-740. (12456) Good behavior allowance for inmates in certain employments. The state department of public institutions is hereby authorized and required to adopt rules and regulations applicable to all inmates employed upon any prison work or activity whereby said inmates so employed, but only while so employed, may be granted good time allowance which shall operate as a credit of time from his sentence as imposed by the court, conditioned upon such inmates' good behavior and compliance with all rules and regulations which may be made by said department or warden of the state prison, for the management and control of said prison and such inmates; provided, said rules may grant not to exceed good time allowance of: ten (10) days per month for inmates assigned within the confines of the walls of the prison; thirteen (13) days per month for those inmates placed outside the confines of the walls of the prison; fifteen (15) days per month for those inmates who have been assigned outside the walls of the prison for a period of one year on a minimum status, and further, provided, that in the event of an attempted escape by the inmate, or a violation of the rules and regulations so prescribed, by the department or warden, the inmate may be punished by the forfeiture of any part of or all good time allowances. The warden of the state prison shall advise the department of public institutions of any attempted escape or violation of rules and regulations on the part of the

inmate, and the department shall approve the forfeiture of any part of or all good time allowance.

History: En. Sec. 1, Ch. 60, L. 1917; re-en. Sec. 12456, R. C. M. 1921; amd. Sec. 1, Ch. 107, L. 1943; amd. Sec. 1, Ch. 117, L. 1955; amd. Sec. 44, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted references to the department of public institutions for references to the board of prison commissioners and the board of pardons; substituted "inmate" for "convict" throughout the section; revised the good time allowances provided for in the first proviso; and made numerous other changes. For previous text, see parent volume.

Forfeiture of Good Time Allowance

A prisoner who, by virtue of section 80-740.1, is earning good time under section 80-739, the prior law, is subject to the provisions of section 80-741, the forfeiture statute which existed under the old law. *Hill v. State*, 139 M 407, 365 P 2d 44, 45; *In re Pelke's Petition*, 139 M 628, 365 P 2d 936.

Under the "new parole laws" (sections 94-9821 to 94-9851) a prisoner retains the right to earn good time under the old

good time statutes and he is subject to forfeiture of this good time. *Hill v. State*, 139 M 407, 365 P 2d 44, 46; *In re Pelke's Petition*, 139 M 628, 365 P 2d 936.

The board of prison commissioners is vested with discretionary power as to the allowance or forfeiture of good time and may make such rules and regulations as are reasonable in connection therewith. *In re Pelke's Petition*, 139 M 354, 365 P 2d 932, 934; *In re Owens' Petition*, 139 M 637, 365 P 2d 935.

A convict, by escaping, forfeits all his good time. *State ex rel. Herman v. Powell*, 139 M 583, 367 P 2d 553, 557.

Second Conviction

Relator was convicted of crime of burglary in the first degree. After serving one year and six days he was released from prison pending his appeal. The conviction was reversed upon such appeal and a new trial ordered. Upon the new trial he was again convicted and sentenced for the same period as the first, ten years. During his second incarceration he was not entitled to credit against the second sentence for time served under the first sentence. *State ex rel. Nelson v. Ellsworth*, — M —, 375 P 2d 316, 318.

DECISIONS UNDER FORMER LAW

Forfeiture of Good Time Allowance

Under section 80-741, R. C. M. 1947 (repealed by Laws 1955, ch. 117, sec. 2) providing for forfeiture of good time for any flagrant disregard of the rules of the prison, the board of prison commis-

sioners has the authority to forfeit any good time for a parole violation. *Hill v. State*, 139 M 407, 365 P 2d 44, 45; *In re Pelke's Petition*, 139 M 354, 365 P 2d 932, 934, 936.

80-740.1. Effective date—application to persons on probation, etc.

Application of Former Forfeiture Law

A prisoner who, by virtue of this section, is earning good time under former section 80-739, is subject to the provisions of section 80-741, the forfeiture stat-

ute which applied to good time earned under section 80-739. *Hill v. State*, 139 M 407, 365 P 2d 44, 45; *In re Pelke's Petition*, 139 M 628, 365 P 2d 936.

80-743. (12459) County jails may be made prisons. Whenever the state prison is insufficient to contain the prisoners sentenced to confinement therein, the department of public institutions must enter into contracts with the commissioners of such counties as have jails suitable for keeping convicts, that may thereafter be sentenced to confinement in the state prison, and must notify the district judges that such jails have been procured for state prison purposes, and such judges, until further notified, must sentence any prisoner convicted of a felony to one of the jails so designated.

History: En. Sec. 2972, Pen. C. 1895; re-en. Sec. 9740, Rev. C. 1907; re-en. Sec. 12459, R. C. M. 1921; amd. Sec. 45, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "the department of public institutions" for "the board."

80-744. (12460) Repealed.**Repeal**

This section (Sec. 2973, Pen. C. 1895), relating to the bond of the warden of the

state prison, was repealed by Sec. 82, Ch. 266, Laws 1963.

80-745. (12461) Insane convicts. When the warden is of opinion that any prisoner is insane, he must certify the fact under oath to the state department of public institutions, which may, in its discretion, order the removal of such prisoner to the state hospital. As soon as the authorities of the state hospital ascertain that such person is not insane, they must immediately notify the state department of public institutions of that fact, and thereupon the warden must cause such prisoner to be at once returned to the prison, if his term of imprisonment has not expired.

History: En. Sec. 2974, Pen. C. 1895; re-en. Sec. 9742, Rev. C. 1907; re-en. Sec. 12461, R. C. M. 1921; amd. Sec. 46, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" for "board" in two places; and substituted "state hospital" for "insane asylum" and "asylum."

80-747. (12463) Repealed.**Repeal**

This section (Sec. 28, Ch. 97, L. 1961), relating to the state prison fund, was

repealed by Sec. 242, Ch. 147, Laws 1963, and by Sec. 82, Ch. 266, Laws 1963.

80-748. (12464) Compensation of sheriffs. Sheriffs delivering prisoners at the state prison must receive all actual expenses necessarily incurred in their transportation, the amount of the expenses in each case to be paid out of any moneys in the state treasury appropriated for that purpose, and no further or other compensation must be received by sheriffs for such transportation or services.

History: En. Sec. 2977, Pen. C. 1895; re-en. Sec. 9745, Rev. C. 1907; re-en. Sec. 12464, R. C. M. 1921; amd. Sec. 29, Ch. 97, L. 1961.

Amendment

The 1961 amendment after the words "in each case to be" deleted the words "audited and allowed by the board of examiners, and."

80-749. (12465) Repealed.**Repeal**

This section (Sec. 2980, Pen. C. 1895),

relating to records of the prison, was repealed by Sec. 82, Ch. 266, Laws 1963.

CHAPTER 8—MONTANA STATE INDUSTRIAL SCHOOL

Section 80-806. Objects and purposes—commitment to school.

80-809. Powers of superintendent.

80-816. Expenses.

80-818. Duration of custody.

80-819. Commutation of sentence.

80-820. Releases on parole.

80-801 to 80-805.1 (12488, 12489, 12491 to 12493) Repealed.**Repeal**

These sections (Sec. 1, p. 183, L. 1893; Secs. 1, 3, 4, Ch. 136, L. 1915; Sec. 1, Ch. 156, L. 1943; Sec. 2, Ch. 242, L. 1953),

relating to location, management, and funds of the industrial school, were repealed by Sec. 82, Ch. 266, Laws 1963.

80-806. (12494) Objects and purposes—commitment to school. The state industrial school shall be for the keeping and reformatory training of all male youths between the ages of ten (10) and twenty-one (21) years who are residents of the state of Montana and who have been regularly committed to said school by a duly authorized court. Such youths shall be presented to the presiding officer of said school by an accompanying officer, employee of said school, parent or guardian, who shall likewise exhibit a certificate of commitment from the court ordering same.

History: En. Sec. 3063, Pen. C. 1895; re-en. Sec. 9780, Rev. C. 1907; amd. Sec. 1, Ch. 42, L. 1921; re-en. Sec. 12494, R. C. M. 1921; amd. Sec. 2, Ch. 156, L. 1943; amd. Sec. 1, Ch. 42, L. 1945; amd. Sec. 59, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "the state industrial school" for "Said school" at the beginning of the section.

Physical Education Building

Chapter 255, Laws 1963, authorized the construction of a physical education building at the industrial school. The act read: "An act providing for the construction of a physical education building at the state industrial school, allowing the borrowing of money or issuance of bonds or other securities for such purpose and providing for repayment of the same.

"Section 1. The state board of public institutions may authorize the construction of a physical education building at the state industrial school; provided, however, that the cost of such building shall

not exceed two hundred and fifty thousand dollars (\$250,000).

"Section 2. For the purpose of effecting the construction of the physical education building specified in section 1, the state board of public institutions, may:

(1) Borrow money and issue bonds or other securities.

(2) For the repayment of money so borrowed, or the retirement of bonds or other securities so issued, pledge all or a part of the income received from the daily fees received from counties and deposited in the sinking fund.

(3) Upon the retirement of these bonds or other securities, this money shall revert to the general fund.

"Section 3. A copy of the notice of sale of any bonds authorized by this act shall be forwarded to the register of state lands of the state of Montana at least thirty (30) days before the date of such sale.

"Section 4. No obligation created by this act shall ever become a charge against the state of Montana."

80-808. (12495) Repealed.

Repeal

This section (Sec. 1, Ch. 61, L. 1921), relating to the president and matron of

the state industrial school, was repealed by Sec. 82, Ch. 266, Laws 1963.

80-809. (12496) Powers of superintendent. The superintendent is the administrative head of the school and shall manage the school, subject, however, to the control of the state department of public institutions.

History: En. Sec. 15, p. 186, L. 1893; re-en. Sec. 3077, Pen. C. 1895; re-en. Sec. 9794, Rev. C. 1907; amd. Sec. 1, Ch. 43, L. 1921; re-en. Sec. 12496, R. C. M. 1921; amd. Sec. 1, Ch. 235, L. 1953; amd. Sec. 60, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "The

superintendent is the administrative head of the school and shall manage" for "The president shall have entire supervision of"; substituted "department of public institutions" for "board of education"; and deleted from the end of the section a clause reading, "and shall hold his office during the pleasure of said state board of education."

80-810. (12497) Repealed.

Repeal

This section (Ap. p. Sec. 16, p. 186, L. 1893), relating to the duties of the trustees

of the state industrial school, was repealed by Sec. 82, Ch. 266, Laws 1963.

80-812 to 80-814. (12500 to 12502) Repealed.**Repeal**

These sections (Secs. 19 to 21, p. 187, L. 1893), relating to rules of the industrial school, and to reports of the president and board of trustees, were repealed by Sec. 82, Ch. 266, Laws 1963.

80-815. (12503) Who may be committed—form of commitment.**Cross-Reference**

Application of Montana Rules of Civil Procedure to commitment proceedings, see Table A, M. R. Civ. P. (sec. 93-2711-7).

80-816. (12504) Expenses. It shall be stated in the order of commitment the place where the boy resided at the time he was taken into custody, his age, as near as can be ascertained, and that such boy has not been convicted of any crime and is not deprived of any of his civil rights or privileges by reason of the making of such order of commitment; and shall command such officer, or an employee of the industrial school designated for such purpose as provided in section 80-807, to take such boy and deliver him without delay to the president [superintendent] of said school, or other person in charge thereof, at the place where the same is located, and the showing of such certificate of the purposes of this act shall be conclusive evidence of his residence or age; accompanying this warrant the judge shall transmit by the officer or employee of the school executing it, a statement of the nature of the complaint to the president [superintendent], together with such other particulars concerning the boy as the judge is able to ascertain; provided that the expense of committing the boy to said school and the returning of him to his parent or guardian after his release therefrom, shall be at the expense of the county of which such boy is committed; and provided that the county from which any boy committed to such school shall be sent be liable for the expense attending the care, education, training, and safekeeping of such boy, and shall pay for the same the sum of seventy-five (75¢) cents per day for each boy so sent, while he will be in actual physical attendance in said institution. On the first of every month the president [superintendent] of such school shall prepare and transmit to the respective boards of county commissioners of the several counties liable for such care, education and safekeeping, an itemized account showing the name of each boy, the number of days in the immediately preceding month for which such payment is to be made and the amount thereof, and said board of county commissioners, after checking the same for its correctness, shall allow it and pay the same by warrant drawn against its general or poor fund, payable to said industrial school and all such warrants when received shall be by the president [superintendent] of school transmitted to the state treasurer and the proceeds thereof shall be deposited to the credit of the sinking fund. Such income received in such fund may be pledged to the retirement of any bonds or other securities issued for the construction of a physical education building at the school; and provided further, that the provisions of this section requiring payment to be made by counties for care, education, training, and safekeeping shall apply to all boys committed to and in such school on the date this act takes effect.

History: En. Sec. 3089, Pen. C. 1895; 12504, R. C. M. 1921; amd. Sec. 4, Ch. 156, re-en. Sec. 9806, Rev. C. 1907; re-en. Sec. L. 1943; amd. Sec. 1, Ch. 11, L. 1945; amd.

Sec. 1, Ch. 203, L. 1947; amd. Sec. 1, Ch. 254, L. 1963.

Compiler's Note

The compiler has inserted the bracketed word "superintendent" in four places to show the effect of the 1963 amendment of section 80-809.

Amendment

The 1963 amendment increased the rate of reimbursement by counties from 50¢ to 75¢ per boy per day; substituted "sinking fund" at the end of the next to last sentence for "state general fund"; and inserted that part of the final sentence preceding the proviso.

80-818. (12506) Duration of custody. Each boy committed to the state industrial school shall remain there until he arrives at the age of twenty-one (21) years, unless paroled or legally discharged; provided that it shall be lawful for the department of public institutions upon the recommendation of the superintendent of said school to discharge therefrom any boy who has arrived at the age of eighteen (18) years, if it be made to appear while there as an inmate he deported and conducted himself in such a manner as to make it reasonably probable that he has reformed and is a proper person to be discharged.

History: En. Sec. 3091, Pen. C. 1895; re-en. Sec. 9808, Rev. C. 1907; re-en. Sec. 12506, R. C. M. 1921; amd. Sec. 5, Ch. 156, L. 1943; amd. Sec. 61, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "department of public institutions" for "executive board" and "superintendent" for "president" in the proviso.

80-819. (12507) Commutation of sentence. Whenever any person under the age of eighteen years has been sentenced by any court of competent jurisdiction to imprisonment in the state's prison, it shall be lawful for the governor, by and with the approval of the board of pardons, upon the application of such person, his parent or guardian, to commute the punishment by substituting therefor the commitment of such person to the Montana state industrial school or the state vocational school for girls, during the minority of such person, unless sooner discharged under the regulations as herein provided. But should such person, after being sent to one of such schools, persist in a depraved course, or escape therefrom, it shall be in the power of the governor, by and with the approval of the board of pardons, to revoke such commutation, and remand him to the state's prison to serve out his unexpired term, and the time so spent by him at one of such schools, or while a refugee therefrom, shall not be considered as a part of his original term of commitment.

History: En. Sec. 3092, Pen. C. 1895; re-en. Sec. 9809, Rev. C. 1907; re-en. Sec. 12507, R. C. M. 1921; amd. Sec. 62, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "person" for "boy or girl" or "boy" in five places; substituted "the Montana state in-

dustrial school or the state vocational school for girls" near the end of the first sentence for "the Montana state reform school"; deleted the words "by the board of trustees" which followed "discharged" near the end of the first sentence; and substituted "one of such schools" in the second sentence for "such reform school" and "the reform school."

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80-820. (12508) Releases on parole. The board of public institutions, on recommendation of the superintendent of the school may release a boy on trial or parole, but in all cases where a boy is released on trial or parole, he must, at stated intervals, report his conduct to the superintendent and present certificates of good behavior, whereupon his leave or parole may be extended, or the board of public institutions, by unanimous vote, may

grant him a full and unconditional discharge and order him finally released from the custody and control of such school. It shall be the duty of the superintendent to recall and return to the school any boy who may not be conducting himself properly, or who may not have a suitable home, and for such purpose such industrial school shall have sole custody and control over any boy so paroled until he shall have reached the age of twenty-one (21) years, or until he shall be finally discharged.

History: En. Sec. 3093, Pen. C. 1895; re-en. Sec. 9810, Rev. C. 1907; amd. Sec. 1, Ch. 57, L. 1917; re-en. Sec. 12508, R. C. M. 1921; amd. Sec. 6, Ch. 156, L. 1943; amd. Sec. 1, Ch. 96, L. 1945; amd. Sec. 63, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "board of public institutions" for "executive board" in two places and "superintendent" for "president" in three places.

80-825 to 80-827. (12513 to 12515) Repealed.

Repeal

These sections (Secs. 3098 to 3100, Pen. C. 1895), relating to buildings and im-

provements at the industrial school, were repealed by Sec. 82, Ch. 266, Laws 1963.

CHAPTER 9—STATE VOCATIONAL SCHOOL FOR GIRLS

Section 80-902. Purpose of school.

80-911. Superintendent, duties of.

80-920. Warrant of judge—expense of commitment and care—Indian girls.

80-922. Term of commitment—paroles.

80-923. Commutations of punishment to commitment to vocational school.

80-924. Release and discharge.

80-901. (12519) Repealed.

Repeal

This section (Sec. 1, Ch. 101, L. 1919), relating to the establishment and location

of the state vocational school for girls, was repealed by Sec. 82, Ch. 266, Laws 1963.

80-902. (12520) Purpose of school. The state vocational school for girls is to be for the care, education, training, and safekeeping of girls between the ages of eight and twenty-one years, who are legally committed thereto by a court of record.

History: En. Sec. 2, Ch. 101, L. 1919; re-en. Sec. 12520, R. C. M. 1921; amd. Sec. 64, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "The state vocational school for girls" for "Said school" at the beginning of the section.

80-904. (12522) Repealed.

Repeal

This section (Sec. 4, Ch. 101, L. 1919; Sec. 1, Ch. 198, L. 1945; Sec. 1, Ch. 133, L. 1955), relating to the executive board

for the state vocational school for girls, was repealed by Sec. 82, Ch. 266, Laws 1963.

80-906 to 80-910. (12524 to 12528) Repealed.

Repeal

These sections (Secs. 6 to 10, Ch. 101, L. 1919; Sec. 3, Ch. 198, L. 1945), relating to the executive board and principal of

the vocational school for girls, and to the leasing of land and construction of buildings for the school, were repealed by Sec. 82, Ch. 266, Laws 1963.

80-911. (12529) Superintendent, duties of. The superintendent of the state vocational school for girls, who is the administrative head of the school, shall be held responsible for the conduct of the state vocational school for girls.

History: En. Sec. 11, Ch. 101, L. 1919; re-en. Sec. 12529, R. C. M. 1921; amd. Sec. 65, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "superintendent" for "principal"; and substi-

tuted "who is the administrative head of the school" for "shall make at every regular meeting reports to the board and shall appoint and discharge all employees, teachers, and other persons connected with the institution and."

80-912 to 80-914. (12530 to 12532) Repealed.

Repeal

These sections (Secs. 12 to 14, Ch. 101, L. 1919; Secs. 4, 5, Ch. 198, L. 1945), relating to the executive board for the

vocational school for girls, and to the salaries of employees of the school, were repealed by Sec. 82, Ch. 266, Laws 1963.

80-916, 80-917. (12534) Repealed.

Repeal

These sections (Sec. 16, Ch. 101, L. 1919; Secs. 6, 8, Ch. 198, L. 1945), relating

to the executive board for the vocational school for girls, were repealed by Sec. 82, Ch. 266, Laws 1963.

80-918. (12535) Commitment of girls to vocational school.

Cross-Reference

Application of Montana Rules of Civil Procedure to commitment proceedings,

see Table A, M. R. Civ. P. (sec. 93-2711-7).

80-920. (12537) Warrant of judge—expense of commitment and care—Indian girls. The judge shall certify in the warrant the place where the girl resided at the time of her arrest; also her age as nearly as can be ascertained, and command a woman officer to take such girl and deliver her without delay to the principal [superintendent] of said school, or other person in charge thereof, at the place where the same is located, and the showing of such certificate for the purposes of this act shall be conclusive evidence of her residence or age; accompanying this warrant the judge shall transmit by the officer executing it a statement of the nature of the complaint to the principal [superintendent], together with such other particulars concerning the girl as the judge is able to ascertain; provided, that the expense of committing such girl to the state vocational school for girls, of the returning of her to her parent or guardian after her release therefrom, shall be at the expense of the county from which the girl is committed; and provided, further, that the county from which any girl committed to the state vocational school for girls shall be sent shall be liable for the expense attending the care, education, training, and safekeeping of such girl while she is in actual physical attendance or residence in said school, and shall pay for the same the sum of seventy-five cents (75¢) per day for each girl so sent until final discharge; and provided, further, that Indian girls who are wards of the United States may be committed by a court of competent jurisdiction and shall be eligible to, and shall be admitted to such school upon the payment or assurance of payment by the Indian department for each Indian ward admitted the sum of seventy-five cents (75¢) per day until final discharge, and the principal [superintendent] shall bill the proper agency therefor. On the first of every month the principal [superintendent] of said vocational school for girls shall prepare and transmit to the respective boards of county commissioners of the several counties liable for such care, education and safekeeping a certificate showing in detail the persons on whose

account such expense was incurred, the amount due on account of each such person respectively for the month preceding, and the said board of commissioners shall allow the said sum so certified against the respective counties, and shall pay the same by warrant to the state vocational school for girls, the same as any other current expense of said county.

History: En. Sec. 20, Ch. 101, L. 1919; re-en. Sec. 12537, R. C. M. 1921; amd. Sec. 1, Ch. 214, L. 1947; amd. Sec. 1, Ch. 73, L. 1951; amd. Sec. 2, Ch. 254, L. 1963.

show the effect of the 1963 amendment of section 80-911.

Amendment

The 1963 amendment increased the rate of reimbursement by counties and by the Indian department from 50¢ to 75¢ per girl per day.

Compiler's Note

The compiler has inserted the bracketed word "superintendent" in four places to

80-922. (12539) Term of commitment—paroles. Each girl committed to the state vocational school for girls shall remain there until she arrives at the age of twenty-one years, unless paroled or legally discharged; provided, that it shall be lawful for the board of public institutions to discharge therefrom any girl, an inmate thereof, who has arrived at the age of eighteen years, if it be made to appear that while there as an inmate she deported and conducted herself in such a manner as to make it reasonably probable that she has reformed and is a proper person to be discharged.

History: En. Sec. 22, Ch. 101, L. 1919; re-en. Sec. 12539, R. C. M. 1921; amd. Sec. 66, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "board of public institutions" for "executive board" near the beginning of the proviso.

80-923. (12540) Commutations of punishment to commitment to vocational school. Whenever any girl under the age of eighteen years has been sentenced by any court of competent jurisdiction to imprisonment in the state prison, it shall be lawful for the governor, by and with the approval of the board of pardons, upon the application of such girl, her parent or guardian, to commute the punishment by substituting therefor the commitment of such girl to the state vocational school for girls during the minority of said girl, unless sooner discharged under the regulations as herein provided. But should such girl, after being sent to such school, persist in a depraved course, or escape therefrom, it shall be in the power of the governor, by and with the approval of the board of pardons, to revoke such commutation and remand her to the state prison to serve out her unexpired term, and the time so spent by her at the state vocational school for girls, or while a refugee therefrom, shall not be considered as a part of her original term of commitment.

History: En. Sec. 23, Ch. 101, L. 1919; re-en. Sec. 12540, R. C. M. 1921; amd. Sec. 67, Ch. 266, L. 1963.

Amendment

The 1963 amendment deleted "by the executive board" which followed "discharged" near the end of the first sentence.

80-924. (12541) Release and discharge. The board of public institutions, on recommendation of the superintendent of the school may release a girl on trial or parole, but in all cases where a girl is released on parole, she must, at stated intervals, report her conduct to the superintendent and present certificates of good behavior, whereupon her leave or parole may be extended, or the board of public institutions, by a unanimous

vote, may grant her a full and unconditional discharge and order her finally released from the custody and control of such school. It shall be the duty of the superintendent to recall and return to the school any girl who is not conducting herself properly, or who may not have a suitable home, and for such purpose such vocational school shall have sole custody and control over any girl so paroled until she shall have reached the age of twenty-one (21) years, or until she shall be finally discharged.

History: En. Sec. 24, Ch. 101, L. 1919; re-en. Sec. 12541, R. C. M. 1921; amd. Sec. 1, Ch. 62, L. 1947; amd. Sec. 68, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "board of public institutions" for "executive board" in two places and "superintendent" for "principal" in three places.

80-930. (12546) Repealed.

Repeal

This section (Sec. 29, Ch. 101, L. 1919), relating to transfer of inmates from the

industrial school, was repealed by Sec. 82, Ch. 266, Laws 1963.

CHAPTER 10—ADMISSION OF FEMALES TO REFORMATORY INSTITUTIONS

80-1002. (12548) Commitment to industrial school, etc.

Cross-Reference

Application of Montana Rules of Civil Procedure to commitment proceedings,

see Table A, M. R. Civ. P. (sec. 93-2711-7).

CHAPTER 11—MISCELLANEOUS PROVISIONS APPLICABLE TO STATE INSTITUTIONS

Section 80-1101. Lease of land for production of crops and livestock for use at certain state institutions.

80-1101. Lease of land for production of crops and livestock for use at certain state institutions. The state department of public institutions is hereby authorized to enter into leases for, leases with the option to purchase, and to purchase lands, buildings, machinery and improvements upon such terms and conditions as are for the best interest of the state for use at the state hospital, the state tuberculosis sanitarium, the state industrial school, the state training school and hospital, and the state prison at Deer Lodge for the production of crops and livestock for use at said institutions.

History: En. Sec. 1, Ch. 249, L. 1953; amd. Sec. 81, Ch. 266, L. 1963.

training school and hospital"; and substituted "prison" for "penitentiary."

Amendment

The 1963 amendment substituted "department of public institutions" for "board of examiners"; substituted "upon such terms and conditions as are" for "as the board may select and upon such terms and conditions as said board may determine to be"; deleted "Montana" before "state hospital"; substituted "state tuberculosis sanitarium" for "Montana state sanitarium"; deleted "Montana" before "state industrial school"; inserted "the state

Repealing Clause

Section 82 of Ch. 266, Laws 1963 read "Sections 80-301, 80-304, 80-305, 80-306, 80-307, 80-309, 80-312, 80-314, 80-315, 80-317, 80-318, 80-319, 80-321, 80-322, 38-103, 38-105, 38-106, 38-111, 38-702, 38-901, 38-902, 80-706, 80-716, 80-717, 80-718, 80-735, 80-736, 80-737, 80-744, 80-747, 80-749, 80-202, 80-203, 80-204, 80-205, 80-208, 80-214, 80-216, 80-217, 38-801, 38-803, 38-817, 38-818, 80-801, 80-802, 80-803, 80-804, 80-805, 80-805.1, 80-808, 80-810, 80-812, 80-813,

80-814, 80-825, 80-826, 80-827, 80-901, 80-904, 80-906, 80-907, 80-908, 80-909, 80-910, 80-912, 80-913, 80-914, 80-916, 80-917, 80-930, 10-103, 10-104, 10-106, 10-107, 10-108, 10-109, 10-115, 10-116, 10-117, and 75-312, R. C. M. 1947, are repealed."

Separability Clause

Section 83 of Ch. 266, Laws 1963 read

"It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 12—STATE DEPARTMENT OF PUBLIC INSTITUTIONS

- Section 80-1201. Purpose of act—creation of department of institutions.
 80-1202. Definitions.
 80-1203. Institutions controlled.
 80-1204. Director of public institutions.
 80-1205. Powers and duties of board.
 80-1206. Appointment of administrative heads of institutions.
 80-1207. Powers of administrative heads of institutions—local advisory committees.
 80-1208. State board of public institutions.
 80-1209. Appointment and term of board members.
 80-1210. Qualifications of board members.
 80-1211. Officers of board—compensation of members.
 80-1212. Meetings—quorum.

80-1201. Purpose of act—creation of department of institutions. In order to utilize at maximum efficiency the resources of state government in a coordinated effort to restore the physically or mentally disabled, to rehabilitate the violators of law, to sustain the vigor and dignity of the aged, to provide for children in need of temporary protection or correctional counseling, to train children of limited mental capacity to their best potential, to rededicate the resources of the state to the productive independence of its now dependent citizens, and to coordinate and apply the principles of modern institutional administration to the public institutions of the state, the state department of public institutions is hereby created within the executive branch of the state government.

History: En. Sec. 1, Ch. 266, L. 1963.

Title of Act

An act relating to the management and control of the state soldiers home, state hospital, state prison, state tuberculosis sanitarium, home for senile men and women, state industrial school, state training school and hospital, Montana children's center, and state vocational school for girls; abolishing the board of commissioners for the insane and the various executive boards, boards of trustees, and boards of managers of such institutions; vesting control and management of such institutions in a state department of public institutions; generally revising chapters of the code relating to such institutions; amending sections 80-302, 80-308, 80-310, 80-311, 80-313, 80-316, 38-102, 38-104, 38-107, 38-108, 38-109, 38-110, 38-119, 38-207, 38-502, 38-504, 38-505, 38-1002, 80-702, 80-703, 80-704, 80-705, 80-707, 80-707.1, enacted as Section 1, Chapter 242, Laws of 1959, 80-707.5, enacted as Section 5,

Chapter 242, Laws of 1959, 80-711, 80-719, 80-720, 80-731, 80-732, 80-738, 80-740, 80-743, 80-745, 80-206, 80-207, 80-209, 80-210.1, 80-211, 80-212, 80-213, 38-802, 38-804, 38-805, 38-1101, 38-1108, 80-806, 80-809, 80-818, 80-819, 80-820, 80-902, 80-911, 80-922, 80-923, 80-924, 10-101, 10-105, 10-110, 10-112, 10-113, 10-114, 10-118, 10-120, 10-121, 75-301, 75-302, 75-303, 80-1101, R. C. M. 1947; and repealing sections 80-301, 80-304, 80-305, 80-306, 80-307, 80-309, 80-312, 80-314, 80-315, 80-317, 80-318, 80-319, 80-321, 80-322, 38-103, 38-105, 38-106, 38-111, 38-702, 38-901, 38-902, 80-706, 80-716, 80-717, 80-718, 80-735, 80-736, 80-737, 80-744, 80-747, 80-749, 80-202, 80-203, 80-204, 80-205, 80-208, 80-214, 80-216, 80-217, 38-801, 38-803, 38-817, 38-818, 80-801, 80-802, 80-803, 80-804, 80-805, 80-805.1, 80-808, 80-810, 80-812, 80-813, 80-814, 80-825, 80-826, 80-827, 80-901, 80-904, 80-906, 80-907, 80-908, 80-909, 80-910, 80-912, 80-913, 80-914, 80-916, 80-917, 80-930, 10-103, 10-104, 10-106, 10-107, 10-108, 10-109, 10-115, 10-116, 10-117, 75-312, R. C. M. 1947.

80-1202. Definitions. As used in this act.

- (1) "Department" means the state department of public institutions.
- (2) "Director" means the director of public institutions.
- (3) "Board" means the state board of public institutions.
- (4) "Public institution" means any of the institutions listed in section 3 [80-1203] of this act.

History: En. Sec. 2, Ch. 266, L. 1963.

80-1203. Institutions controlled. The state department of public institutions shall generally control and supervise, and shall have jurisdiction over the officers, employees, moneys, property, lands and buildings of the following public institutions:

- (1) Montana veterans' home
- (2) State hospital
- (3) State prison
- (4) State tuberculosis sanitarium
- (5) Montana center for the aged [home for senile men and women]
- (6) State industrial school
- (7) State training school and hospital
- (8) Montana children's center
- (9) State vocational school for girls

History: En. Sec. 3, Ch. 266, L. 1963.

80-1204. Director of public institutions. (1) The director of public institutions is the chief executive and administrative officer of the department, and shall appoint the necessary employees for the department office and fix their compensation.

(2) The director shall be a person qualified by experience, training and high professional competence in institutional management. If possible, he shall be a member of a national professional organization of hospital or institutional administrators.

(3) The board shall appoint the director.

History: En. Sec. 4, Ch. 266, L. 1963.

80-1205. Powers and duties of board. The board has the power and duty, to

(1) Adopt general rules and regulations, not inconsistent with law, for the government of the department and for the government of public institutions. Such rules and regulations may govern and provide for

(a) The admission, custody, transfer and release of inmates or residents of public institutions. Provided, however, that no such rules or regulations shall amend, alter, or change the powers and duties of the state board of pardons as contained in Chapter 98 of Title 94 of the Revised Codes of Montana, 1947, as amended.

(b) The acquisition, use, and transfer of materials, supplies, and produce, for and between institutions.

(c) The expenditure and receipt of moneys at public institutions.

(d) Nothing herein shall be construed to modify, cancel, or invalidate any contracts or contractual relationships or affect the right of the board to execute contracts.

(2) Report to the governor before the first day of November of each year and to the legislative assembly before the second Monday of each biennial legislative session. The reports shall fully describe the activities of the department and shall contain recommendations for the passage of any laws necessary for the improvement of public institutions.

(3) Require bonds for officers and employees of public institutions and the department in such amounts and form as may be necessary.

(4) Review and approve all budget requests for public institutions prior to submittal to the director of the budget.

(5) Classify the lands connected with public institutions and determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration the needs of all public institutions for the food products that can be grown or produced on the lands, and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in public institutions.

(6) Utilize the staff and services of other state agencies and units of the university of Montana, within their respective statutory functions, to carry out the purposes of this act.

(7) Develop, in consultation with the administrative heads of public institutions, a systematic building program providing for the projected long range needs of public institutions.

(8) Encourage the establishment of programs at the local level for the rehabilitation of the physically and mentally disabled.

History: En. Sec. 5, Ch. 266, L. 1963.

80-1206. Appointment of administrative heads of institutions. The board shall appoint an administrative head for each institution.

History: En. Sec. 6, Ch. 266, L. 1963.

80-1207. Powers of administrative heads of institutions—local advisory committees. The administrative heads of public institutions are fully responsible for the immediate direction, management and control of their respective institutions, subject to the general policies and programs established by the department. Except as otherwise provided by law, the administrative head of each public institution may appoint and employ all assistants and employees required for the management of the institution placed in his charge, subject to approval by the director as to number and salary. The administrative head of a public institution may appoint a local advisory committee, without obligation to the state, to serve as a liaison agency with the community in which the institution is located.

History: En. Sec. 7, Ch. 266, L. 1963.

80-1208. State board of public institutions. There is hereby created a state board of public institutions. The function of the board, in addition to other duties given to it by law is to advise and consult with the governor and director on the management of public institutions.

History: En. Sec. 8, Ch. 266, L. 1963.

80-1209. Appointment and term of board members. The board consists of five (5) members who shall be appointed by the governor with the advice and consent of the senate. The appointees shall be selected so

that not more than three (3) are from the same congressional district and so that not more than three (3) are affiliated with the same political party. The original members of the board shall be appointed for one (1), two (2), three (3), four (4) and five (5) year terms. An appointment to replace a member whose term has expired shall be for five (5) years. An appointment to replace a member whose term has not expired shall be for the remainder of the term.

History: En. Sec. 9, Ch. 266, L. 1963.

80-1210. Qualifications of board members. Board members shall be qualified by aptitude, experience or training.

History: En. Sec. 10, Ch. 266, L. 1963.

80-1211. Officers of board—compensation of members. The board shall elect a chairman and any other necessary officer. Board members shall receive twenty-five dollars (\$25.00) per day and shall be reimbursed for actual and necessary expenses incurred in attending meetings or in the discharge of other board duties. The director shall act as secretary of the board.

History: En. Sec. 11, Ch. 266, L. 1963.

80-1212. Meetings—quorum. The board shall meet once each quarter and may hold additional meetings on the call of the chairman or at the request of the director. Three members constitute a quorum for the transaction of business.

History: En. Sec. 12, Ch. 266, L. 1963.

CHAPTER 13—COLLECTION OF COSTS OF SUPPORT OF INMATES AND PATIENTS

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| Section 80-1301. | Purpose of act. |
| 80-1302. | Definition of terms. |
| 80-1303. | Department responsible for collection of fees. |
| 80-1304. | Assessment of per diem charges against responsible persons—inability to pay full charges—charges against county of residence. |
| 80-1305. | Civil suits for collection of payments—claims against decedents' estates. |
| 80-1306. | Moneys deposited in treasury. |

80-1301. Purpose of act. The purpose of this act is to

(1) Provide an equitable method for determining financial obligations for the support and care of residents in certain state schools and public institutions,

(2) Assure Montana's citizens that public moneys used to finance state institutions do not pay for care that might reasonably be borne by residents in certain state schools and public institutions, their parents, guardians or relatives, and

(3) Offer institutional administrators a workable procedure for assessing and collecting per diem costs.

History: En. Sec. 1, Ch. 213, L. 1963.

Title of Act

An act providing for the collecting and processing of fees due the state for the care of residents in certain state schools

and public institutions; amending sections 10-119, 38-108 and 38-815 R. C. M. 1947; and repealing sections 38-118, 38-214, 38-304, 38-409, 38-411, 38-412, 38-707, 38-708, 38-808, 38-809, 38-809.1, 38-812, 80-211, 80-212, and 80-213 R. C. M. 1947.

80-1302. Definition of terms. As used in this act

(1) "Certain state schools and public institutions" means any of the following institutions:

- (a) Montana children's center
- (b) State hospital
- (c) State training school and hospital
- (d) State tuberculosis sanitarium
- (e) Montana veterans' home

(f) Montana center for the aged [home for senile men and women].

(2) "Full-time equivalent resident load" means the total daily resident count for the fiscal year divided by the number of days in the year.

(3) "Per diem" means the gross daily cost of operating a state school or public institution, excluding capital outlay for physical plant and the cost of educational programs, divided by the full-time equivalent resident load.

(4) "Resident" means any person who is receiving care from, or who is a charge of or who is a resident of a state school or public institution.

(5) "Responsible person" means a relative, guardian or other person legally liable for the support and maintenance of a resident.

History: En. Sec. 2, Ch. 213, L. 1963.

80-1303. Department responsible for collection of fees. The department of public institutions, hereafter referred to as "department," is responsible for the collecting and processing of fees due to the state for the care of residents in certain state schools and public institutions.

History: En. Sec. 3, Ch. 213, L. 1963.

80-1304. Assessment of per diem charges against responsible persons—inability to pay full charges—charges against county of residence. (1) The department shall assess monthly against each resident or responsible person the per diem charge applicable to the state school or public institution of residence. If the resident is an Indian who is a ward of the federal government, the per diem charge shall be assessed against the appropriate agency of the federal government. The per diem rate shall be computed by the state budget director in accordance with section 2 [80-1302] of this act.

(2) A resident or responsible person may apply to the department for permission to pay less than the per diem charge or none of the per diem charge. On receipt of such application, the department shall request an investigation by the county department of public welfare of the county in which the resident or responsible person is a resident. The county department of public welfare shall submit to the department, on forms furnished by the department, no later than sixty (60) days after the request, a report and recommendation on the ability of the resident or responsible person to pay all or a part of the per diem charge. Upon receipt of the report, the department shall determine, based on the financial ability of the resident or responsible person, whether the resident or responsible person shall be charged with the full amount, a lesser amount, or whether no charge against the resident or responsible person shall be made. If a resident, responsible person, or a county where a resident

resides, disagrees with the determination of the department, an appeal may be filed within thirty (30) days of the determination with the state board of public welfare. The decision of the board shall be final.

(3) The department may, at any time, review and change any determination for per diem payments, and may, if necessary, request a further investigation by the appropriate county department of public welfare.

(4) Subject to the provisions of subsection (5) of this section, if the charge against the resident or responsible person is less than one hundred per cent (100%) of the per diem, the county of residence shall be charged with the difference between the per diem charged the resident or responsible person and one hundred per cent (100%) of the per diem, except that in no case shall the county of residence be charged with more than fifty per cent (50%) of the per diem. 17

(5) Section ~~71~~ 302, R.C.M. 1947, shall be used to determine a resident's eligibility for per diem contributions by the county of residency, except that time spent in a custodial institution shall not in any case be counted in determining the matter of county residence.

History: En. Sec. 4, Ch. 213, L. 1963.

80-1305. Civil suits for collection of payments—claims against decedents' estates. If a resident or responsible person liable for per diem payments due under this act refuses or fails to make such payments, the payments are collectible by a civil suit brought in the name of the state of Montana. The state of Montana may sue such resident or responsible person for such payments due; and any judgment obtained is a lien upon the real property of such person, and shall be collected as other judgments. Any claim arising under this act has the same force and effect against the real and personal property of a deceased person as other debts of a decedent, and shall be ascertained and recovered in the same manner.

History: En. Sec. 5, Ch. 213, L. 1963.

80-1306. Moneys deposited in treasury. All moneys received by the department under this act shall be deposited in the state treasury to the credit of the general fund, unless otherwise specifically provided by law.

History: En. Sec. 6, Ch. 213, L. 1963.

TITLE 81—STATE LANDS

- Chapter 1. Department of state lands and investments—general provisions, 81-102.
2. Commissioner of state lands and investments, 81-209.
 4. Leasing of agricultural lands—grazing lands and city and town lots, 81-401, 81-402, 81-405 to 81-407, 81-414, 81-433, 81-433.1, 81-436.
 7. Leases and permits for deposits of stone, gravel, sand and other minerals, 81-701.
 9. Sale of state lands, 81-902, 81-908 to 81-910, 81-912.
 10. Investments, 81-1001, 81-1005.
 14. State forests—forester—timber sales—fire wardens, 81-1403, 81-1408, 81-1410.
 16. Timber sales—general provisions, 81-1601.
 17. Oil and gas on state lands—disposal of, 81-1701, 81-1705, 81-1707, 81-1709.
 19. Satisfaction of farm mortgage loans, Repealed—Section 8, Chapter 184, Laws of 1961.

CHAPTER 1—DEPARTMENT OF STATE LANDS AND INVESTMENTS—GENERAL PROVISIONS

Section 81-102. Definitions.

81-102. (1805.2) **Definitions.** In this act, the term “department” shall mean the department of state lands and investments; the term “board” shall mean the state board of land commissioners; the term “commissioner” shall mean the commissioner of state lands and investments; the term “assistant commissioner” shall mean the assistant commissioner of state lands and investments; the term “state land” or “lands” shall mean and include all lands that have heretofore been granted and that hereafter may be granted to the state by the United States for educational purposes or for any other purpose, either directly or through exchange for other lands; all lands that have become the property of the state through deed or devise from any person; and all lands that have become the property of the state through the operation of law, except, however, such of these lands as the state has sold and conveyed through the issuance of patent; and except also lands that are used as building sites, campus grounds, or for experimental purposes by any of the state institutions, and have become the property of such institutions.

History: En. Sec. 2, Ch. 60, L. 1927; amd. Sec. 7, Ch. 184, L. 1961.

Amendment

The 1961 amendment deleted from the definition of “state land” or “lands” a clause reading “all lands to which the state has become the owner through a mortgage to the state, either by foreclosure or otherwise”; and deleted from the end of the section a clause that read, “the term ‘mortgage land’ or ‘mortgage

lands’ shall mean land or lands to which the state has become the owner through a mortgage thereon either by foreclosure or otherwise.”

Repealing Clause

Section 8 of Ch. 184, Laws 1961 read “That sections 81-911, 81-914, 81-1901, 81-1902, 75-3730, 75-3731, 75-3732, 75-3733, Revised Codes of Montana, 1947, are hereby expressly repealed.”

CHAPTER 2—COMMISSIONER OF STATE LANDS AND INVESTMENTS

Section 81-209. Salary and compensation.

81-209. (1805.14) **Salary and compensation.** The salary of the commissioner shall be not more than ten thousand dollars (\$10,000) per

annum, payable monthly. The commissioner of state lands and investments shall be paid actual and necessary expenses while engaged in the performance of official duties outside of the state capitol.

History: En. Sec. 14, Ch. 60, L. 1927; amd. Sec. 1, Ch. 176, L. 1949; amd. Sec. 1, Ch. 164, L. 1951; amd. Sec. 1, Ch. 119, L. 1953; amd. Sec. 4, Ch. 225, L. 1963.

Amendment

The 1963 amendment substituted the provision for a maximum salary of \$10,000 for a provision fixing the salary at \$7,000.

CHAPTER 4—LEASING OF AGRICULTURAL LANDS—GRAZING LANDS AND CITY AND TOWN LOTS

- Section 81-401. Policy of state as to appraisal and leasing state land.
 81-402. Lease of state lands—crop share rental basis used.
 81-405. Renewal leases—preference right of lessee.
 81-406. Arbitrators to fix value of improvements—appeal.
 81-407. Who may lease—how much and for what length of time.
 81-414. Change in terms of lease.
 81-433. Formula for fixing annual rental.
 81-433.1. Additional computation for specified period.
 81-436. Deposit required with bid for lease—retention or return—forfeiture.

81-401. Policy of state as to appraisal and leasing state land. It is hereby declared to be the policy of the state, that in the interest of accomplishing a sustained income for the school and other trust funds to be derived from land grant and other state lands, agricultural and grazing lands and town and city lots shall be appraised from time to time but not less than once during the term of every lease by competent appraisers. The purpose of such appraisals shall be to determine the rental value of agricultural lands and town and city lots, the general condition of the lands, and the carrying capacity of grazing lands.

History: En. Sec. 1, Ch. 207, L. 1945; amd. Sec. 1, Ch. 260, L. 1963.

Amendment

The 1963 amendment substituted "but not less than once during the term of every lease by competent appraisers" at the end of the first sentence, and the entire second sentence, for "as to their rental value, by competent appraisers, or appraiser, and the fair rental value of such lands so determined from time to time"; and deleted other clauses reading, "and that agricultural lands be hereafter leased, or lease term renewed or extended, only upon a crop share basis, and that no lease be made or renewed, or the lease term

extended, on any other basis, except in unusual cases, and then only upon approval by the state board of land commissioners set forth in their minutes of proceedings specifying the unusual conditions to justify the leases; and that grazing lands be hereafter leased, or lease term renewed or extended, only upon the basis of animal unit carrying capacity of the land for twelve month grazing period per calendar year, as determined by the appraisal, and at a rate of money for an animal-unit-month to be determined by the legislature from time to time, and in the absence of such determination at the rate of twenty cents (20¢) per animal-unit-month."

81-402. (1805.20) Lease of state lands—crop share rental basis used.
 (1) Under the general direction and control of the state board of land commissioners, the commissioner shall lease all agricultural and grazing lands and all town and city lots open to leasing upon proper application, provided that, as to agricultural lands, all leases shall be continued or made upon a crop share rental basis of not less than one-fourth ($\frac{1}{4}$) of the annual crops to the state, or the usual landlord's share prevailing in the district, whichever is greater.

(2) In unusual cases the board may authorize a lease upon other basis than crop share, but in all such unusual cases the board shall set

forth in its minutes of approval the unusual conditions of the case and the rental to be charged, and by unusual conditions is meant a proposed use of the land for other than the annual production of agricultural crops justifying, in the opinion of the board, a greater money rental of the land than the value of the usual landlord share of annual agricultural crops in the area in which the land is situated, and provided further that, the rental rate for all state grazing lands leased and to be leased shall be based upon the appraised animal-unit-month carrying capacity of the land as provided in section 81-433, R.C.M. 1947, as amended, and provided further that, as to town and city lots owned by the state, the fair rental value thereof shall be determined from time to time under the direction of the commissioner and with the approval of the state board of land commissioners and record made thereof, and such town or city property may be leased at its current appraised rental value for terms of not to exceed five (5) years.

(3) All leases of agricultural or grazing lands, or town or city lots shall be upon condition that the state board of land commissioners may in its discretion, offer said land for sale at any regular public sale of state lands held in the county where the land is situated, upon the same terms, and in the same manner as land not under lease.

History: En. Sec. 20, Ch. 60, L. 1927; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963.

Amendment

The 1963 amendment deleted the words "not outstanding (for the next and succeeding years hereafter) and all leases hereafter made, and all renewals of leases"

which followed "all leases" in subsection (1); deleted "from and after February 28, 1952" which appeared at the beginning of the first proviso in subsection (2); and substituted "as provided in section 81-433, R.C.M. 1947, as amended" in the first proviso to subsection (2) for "multiplied by the rate per animal-unit-month as fixed in this act."

81-405. (1805.21) Renewal leases—preference right of lessee. A lessee of state land classed as agricultural, grazing, town lot or city lot, or in any of those classes, who has paid all rentals due from him to the state and who has not violated the terms of his lease shall be entitled to have his lease renewed for a five (5) or ten (10) year period at the rental rate provided by law for the renewal period, and subject to any other conditions, at the time of the renewal as may by law be imposed as terms of such leases, at any time within thirty (30) days prior to its expiration if no other application or applications for lease of the land have been received thirty (30) days prior to the expiration of his lease. In case such other application or applications have been received, the holder of the lease shall have the preference right to lease the land covered by his former lease to the extent that he may take the lease at the highest bid made by any other applicant. Applications for lease of lands in this section referred to shall be given preference in the order of their receipt at the office of the commissioner in Helena.

Notwithstanding the foregoing provisions, the state board of land commissioners shall have the power to withdraw any agricultural or grazing state land from further leasing for such period as the board may determine to be in the best interest of the state of Montana. All bids for leases

and applications for renewals of leases of state agricultural lands or state grazing lands shall be in writing and sealed and shall be submitted to the state board of land commissioners at the office of the commissioner.

History: En. Sec. 21, Ch. 60, L. 1927; amd. Sec. 1, Ch. 65, L. 1939; amd. Sec. 1, Ch. 20, L. 1941; amd. Sec. 5, Ch. 207, L. 1945; amd. Sec. 3, Ch. 260, L. 1963.

Amendment

The 1963 amendment rewrote this section, dividing it into two paragraphs and several sentences, rearranging the language, and making substantial changes; for previous text, see parent volume.

81-406. (1805.22) Arbitrators to fix value of improvements—appeal.

If the owner of any improvements on state lands of the type authorized by law at the time they were placed thereon desires to sell such improvements to the new lessee and they are unable to agree on the value thereof, such value shall be ascertained and fixed by three (3) arbitrators, one of which shall be appointed by the owner of the improvements, one by the new lessee and the third by the two (2) arbitrators so appointed. The reasonable compensation that such arbitrators may charge shall be paid in equal shares by the owner of the improvements and the new lessee. The value of such improvements so ascertained and fixed shall be binding on both parties; provided, however, that if either party is dissatisfied with the valuation so fixed, he may within ten (10) days appeal from their decision to the commissioner who shall thereupon cause the chief field agent or assistant field agent to examine such improvements and whose decision shall be final. The commissioner shall charge and collect the actual cost of such re-examination to the owner and the new lessee in such proportion as in his judgment justice may demand. The value of such improvements shall be ascertained and fixed as hereinafter and in this act provided.

History: En. Sec. 22, Ch. 60, L. 1927; amd. Sec. 4, Ch. 260, L. 1963.

type authorized by law at the time they were placed thereon" in the first part of the first sentence.

Amendment

The 1963 amendment inserted "of the

81-407. (1805.23) Who may lease—how much and for what length of time. No person^{single or} shall be qualified to lease state lands except one who is the head of a family unless he or she has attained the age of twenty-one (21) years. Any such person and any association, company or corporation authorized to hold lands under lease may lease state lands, and there may be included under one lease, tracts of lands embracing more than one (1) section. Any such person, association, company or corporation may hold more than one (1) lease to such lands. No lease to agricultural or grazing lands shall be for a period other than five (5) or ten (10) years. Leases for city and town lots shall not exceed five (5) years. When a lease expires or is cancelled the commissioner shall immediately so notify the holder of the lease and all persons who have expressed an interest in leasing the land during, or immediately preceding the term of such expired or cancelled lease. If the legislature raises the rentals for state grazing lands during the term of any leases of grazing land hereafter issued which are not issued as a result of competitive bidding the

lessee shall, for the years after such increase becomes effective, pay such increase rental and the terms of grazing leases hereafter issued shall so provide.

History: En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963.

Amendment

The 1963 amendment deleted the words "whether the lands have been received by the state through federal land grants or consist of so-called 'mortgage lands'"

which followed "section" at the end of the second sentence; substituted the present fourth and fifth sentences for a sentence reading, "No lease to agricultural or grazing lands, or town or city lots shall be for a longer period of time than ten (10) years"; inserted the sixth sentence (providing for notice of expiration or cancellation of lease); and made minor changes in punctuation.

81-414. (1805.28) Change in terms of lease. Whenever any land is leased for grazing purposes, and the lessee desires to cultivate any part of the land, he shall before doing any such cultivation, make application to the commissioner stating how much land he desires to cultivate, showing the location in the section of such land, send his lease to the commissioner to have the necessary changes made therein, and shall agree that for the remainder of the term of the lease the annual rental shall be at the rate of the original lease until such time as the first crop is harvested from the cultivated portion of the lease. At the time of the first harvest, the lease shall be at the original rate for that portion remaining as grazing land plus the crop share rental for that portion cultivated. In case any person shall cultivate lands leased for grazing purposes, without having first secured the right to do so in the manner herein provided, the lease shall be subject to cancellation or the lessee shall be liable for twice the regular agricultural rental on the land so cultivated in addition to the grazing rental thereof as may be decided by the board. The provisions of this section shall be incorporated in every lease.

History: En. Sec. 28, Ch. 60, L. 1927; amd. Sec. 9, Ch. 207, L. 1945; amd. Sec. 1, Ch. 120, L. 1963.

Amendment

The 1963 amendment substituted "the original lease until such time as the first crop is harvested from the cultivated portion of the lease" for "the full rate for the whole of the leased land for grazing purposes, plus the crop share rental on the

basis in this act provided for, the portion of the land designated in the application to be cultivated, whether the lessee continues to cultivate such part or not, it being the intention of this provision to protect the interests of the state and to induce lessees to have the leases originally issued for the usage intended to be made of the land" at the end of the first sentence; and added the second sentence.

81-433. Formula for fixing annual rental. When used in this section: "Animal unit" means one cow, one horse, five sheep or five goats.

"Animal-unit-month carrying capacity" means that amount of natural feed necessary for the complete subsistence of one animal unit for a period of one (1) month.

The state board of land commissioners shall establish the per annum rental rate per section of all grazing lands which are the property of the state of Montana upon the animal-unit-month basis as hereinafter provided.

In fixing the minimum annual rental per section, the following formula shall be used:

The base rental shall be computed by multiplying thirty-two cents (32¢) plus two (2) times the average price per pound of beef cattle on the farm in Montana for the previous year times the animal-unit-month carrying capacity of the land.

(a) The minimum annual rental for grazing lands with an annual carrying capacity of more than fourteen (14) and less than twenty (20) animal units per section is the base rental.

(b) The minimum annual rental for grazing lands with an annual carrying capacity of more than nineteen (19) animal units per section is ten cents (10¢) more than the base rental.

(c) The minimum annual rental for grazing lands with an annual carrying capacity of less than fifteen (15) animal units per section is ten cents (10¢) less than the base rental.

The carrying capacity of the land, to be used in the above formula, shall be in accordance with the determinations of the commissioner of state lands and investments made pursuant to section 81-404, R.C.M. 1947.

The average price per pound of beef cattle on the farm in Montana shall be taken from statistics published by the bureau of agricultural economics of the United States department of agriculture current at the time of computation of the rental, or from other reliable sources current at such time.

History: En. Sec. 2, Ch. 190, L. 1949; amd. Sec. 1, Ch. 229, L. 1951; amd. Sec. 1, Ch. 284, L. 1959; amd. Sec. 6, Ch. 260, L. 1963.

Compiler's Note

Chapter 260, Laws 1963, contained no section 7 or 8.

Amendments

The 1959 amendment made numerous minor changes in phraseology; increased the average grazing fee from 18¢ to 24¢ per month; and rewrote the sample computation to conform.

The 1963 amendment inserted the definitions of "animal unit" and "animal-unit-month carrying capacity" at the beginning of the section; completely rewrote the formula for minimum annual rental; deleted the sample computation; and made numerous minor changes in phraseology.

Effective Date

Section 9 of Ch. 260, Laws 1963 read "This act shall be effective for the 1964 rental year and thereafter."

References

Cited and applied in *Ivins v. Hardy*, 134 M 445, 333 P 2d 471, 476.

81-433.1. Additional computation for specified period. For the period beginning after February 28, 1960 and ending February 28, 1961, 10 cents per animal unit shall be added to the animal unit figure resulting from the formula as described in this act to determine the rental fee for state lands during this period. From and after February 28, 1961 the formula contained in section 1 [81-433] shall apply.

History: En. Sec. 2, Ch. 284, L. 1959.

Repealing Clause

Section 3 of Ch. 284, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 284, Laws 1959 read "This act shall be in full force and effect from and after the twenty-eighth day of February, 1960."

81-436. Deposit required with bid for lease—retention or return—forfeiture. All persons bidding for the lease of state owned lands shall deposit with the commissioner, as evidence of good faith, a certified check, cashier's check or money order in an amount equal to the annual rental

bid in the case of grazing land; and an amount equal to one dollar (\$1.00) per acre for each acre of agricultural land contained in the lease, in the case of agricultural land on which such bid is made on a crop share basis. The commissioner shall retain the deposit of the successful bidder to be applied on the rental for the first year of the lease only, and return any balance of the deposit at the end of the first year to the successful bidder, and return the deposits of the unsuccessful bidders. If the successful bidder fails to execute the lease for any reason, his deposit shall be forfeited and deposited by the commissioner to the credit of the proper interest and income account in the federal and private revenue fund.

History: En. Sec. 1, Ch. 185, L. 1963. of good faith by bidders on state land leases.

Title of Act

An act to require a deposit as evidence

CHAPTER 7—LEASES AND PERMITS FOR DEPOSITS OF
STONE, GRAVEL, SAND AND OTHER MINERALS

Section 81-701. The board may issue leases.

81-701. (1805.52) The board may issue leases. Whenever there are found upon state lands to which the title is vested in the state, and which lands have not been sold by the state under certificate of purchase, or otherwise, deposits of stone, limestone, oil shale, clay, bentonite, calsite, talc, mica, ceramic, asbestos, marble, diatomite, gravel or sand, or phosphate, sodium, potash, sulphur, fluorite or barite, or any other nonmetallic minerals, but not including coal, oil or gas, valuable for building, mining or other commercial purposes, the state board of land commissioners may, in its discretion, issue to private persons permits or leases for the removal and disposition of such stone, limestone, oil shale, clay, bentonite, calsite, talc, mica, ceramic, asbestos, marble, diatomite, gravel, sand, phosphate or other said deposits; upon such terms and conditions as the board may determine; provided, however, that all such leases shall be upon a royalty basis calculated upon a gross value by weight or cubic measurement as is most favorable for the particular substance being mined or extracted from the lands, such gross value to be determined at the mine or site of operation, and the rates shall be the same that ordinarily would be charged by private owners under similar circumstances, or as in the determination of the board may be determined fair and reasonable, and the fee for issuing the lease shall be the same as for an oil and gas lease. No such lease shall be made for longer term than ten (10) years, and the board may demand a cash deposit to guarantee the payment of the royalties, or demand a surety bond, or both such cash deposit and bond, as the board may determine.

History: En. Sec. 52, Ch. 60, L. 1927; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961.

Amendment

The 1961 amendment inserted the word "phosphate" the second place that word appears.

CHAPTER 9—SALE OF STATE LANDS

- Section 81-902. Mineral reservations in state lands.
 81-908. Who may purchase and how much.
 81-909. Sale at public auction, where held.
 81-910. Notice of sale.
 81-912. Regulations concerning sale—forfeiture for nonpayment—disposition of proceeds.

81-901. (1805.64) Certain state lands not subject to sale.

Leasing of land

This section is superseded by sections 81-1725 to 81-1731 insofar as they are in

conflict. State ex rel. Hughes v. State Board of Land Commrs., 137 M 510, 353 P 2d 331, 336.

81-902. (1805.65) Mineral reservations in state lands. All coal, oil, oil shale, gas, phosphate, sodium and other mineral deposits, except sand, gravel, building stone and brick clay, in lands belonging to the state of Montana, or which may hereafter become the property of the state, which have not already been reserved by the United States, are hereby reserved to the state. All such deposits are reserved from sale except upon a rental and royalty basis as provided by law. In the case of lands sold after this act takes effect, a purchaser of any lands belonging to the state or which may hereafter become the property of the state shall acquire no right, title, or interest in or to any of such deposits. The state also reserves for itself and its lessees the right to enter upon [such lands] to prospect for, develop, mine and remove such deposits and to occupy and use so much of the surface of the said lands as may be required for all purposes reasonably extending to the exploring for, mining and removal of such deposits therefrom, but the lessee shall make just payment to the purchaser for all damage done by reason of such entry upon the land and the use and occupancy of the surface thereof.

History: En. Sec. 65, Ch. 60, L. 1927; amd. Sec. 1, Ch. 28, L. 1929; amd. Sec. 1, Ch. 183, L. 1935; amd. Sec. 1, Ch. 184, L. 1961.

Compiler's Note

The compiler has inserted the bracketed words "such lands" in the fourth sentence.

Amendment

The 1961 amendment deleted from the end of the third sentence clauses reading, "except that where the oil and gas have not been reserved by the United States the purchaser of mortgage lands shall be entitled to receive a royalty of six and

one-fourth per centum (6¼%) of all gas or oil produced from such mortgage lands, such royalty to be payable directly to him by the lessee either in gas or oil or in cash as the purchaser may desire and determine; provided, however, that the purchaser of the mortgaged land shall not have any right to lease such land or any part thereof for oil and gas exploration or production; the state shall have the sole power to lease the land for all mineral purposes"; deleted from the fourth sentence the words "such lands" which now appear in brackets; and deleted a second paragraph, for text of which see parent volume.

81-908. (1805.71) Who may purchase and how much. State lands shall be sold only to citizens of the United States or to persons who have declared their intentions to become citizens, or to corporations organized under the laws of this state. No person shall be qualified to purchase state land who has not reached the age of twenty-one (21) years. As far as possible to determine the lands shall be sold only to actual settlers or to persons who will improve the same, and not to persons who are likely to hold such lands for speculative purposes intending to resell the same at a higher price without having added anything to their value.

No person or corporation shall be entitled to purchase more than one section of state land, and this area shall not include more than one hundred and sixty (160) acres of land susceptible of irrigation. These limitations as to area and irrigableness shall not apply to lands within a federal irrigation project wherein the Congress of the United States of America now or hereafter authorizes water to be furnished to an area exceeding one hundred and sixty (160) irrigable acres.

State lands may be sold to any sovereign state of the United States or to any board of trustees or public corporation or agency of such state created by such state as an agency or political subdivision thereof. Said lands may be purchased in the quantities set forth in this section for use by such state, board of trustees, public corporation, agency, or political subdivision for educational or scientific purposes.

The title to any state lands which have been heretofore purchased by a sovereign state or a board of trustees or public corporation, agency or political subdivision thereof qualified under the provisions of this act is hereby ratified and confirmed.

History: En. Sec. 71, Ch. 60, L. 1927; amd. Sec. 1, Ch. 95, L. 1949; amd. Sec. 1, Ch. 10, L. 1959; amd. Sec. 2, Ch. 184, L. 1961.

words "shall not apply" deleted a phrase which read "to lands acquired by the state in connection with the foreclosure of its mortgages, or."

Amendments

The 1959 amendment added all that part of the first paragraph beginning with the words "or to lands within a federal."

The 1961 amendment in the last sentence of the first paragraph after the

Effective Date

Section 2 of Ch. 10, Laws 1959 provided the act should be in effect on and after its passage and approval. Approved February 4, 1959.

81-909. (1805.72) Sale at public auction, where held. All sales of state lands shall be only at public auction held at the county court house of the county in which the lands are located; provided, however, that in case no suitable room can be found in such court house at the time for holding the sale, then the sale may be transferred to a more convenient place within a reasonable distance of such court house by public announcement made at the court house at the time fixed for beginning the sale.

History: En. Sec. 72, Ch. 60, L. 1927; amd. Sec. 3, Ch. 184, L. 1961.

Amendment

The 1961 amendment deleted from the end of the section a proviso which read, "and provided further that the procedure

for the sale of the so-called 'mortgage lands' acquired by the state through the foreclosure of mortgages, or obtained otherwise in connection with such mortgages, shall be subject to the modifications hereinafter provided."

81-910. (1805.73) Notice of sale. The commissioner shall cause notice of every such sale to be given by publication in the official county paper of the county where the sale is to be held once each week through four consecutive weeks next preceding the date of sale. Such notice, shall give the day, date and time of day of the beginning of the sale; shall contain a list of all the tracts to be offered for sale showing the township and range in which they are located, describing the same with reference to section number and subdivision of the section, or with reference to block and lot if surveyed, the number of acres in unplatted lands

and the appraised value per acre and also the appraised value of each lot. As a general rule nonirrigable farming lands shall be listed in quarter sections; grazing lands may be listed in larger tracts not exceeding one (1) section.

For the convenience of the bidders, the commissioner may assign the tracts advertised a consecutive series of sales numbers and show the sales number of each tract in the notice of sale.

The notice shall also give the terms and conditions of sale, and such additional information as the commissioner may deem useful.

History: En. Sec. 73, Ch. 60, L. 1927; end of the first paragraph a sentence
amd. Sec. 4, Ch. 184, L. 1961. which read "These limitations need not
apply to mortgage lands."

Amendment

The 1961 amendment deleted from the

81-911. (1805.74) Repealed.

Repeal

This section (Sec. 74, Ch. 60, L. 1927), was repealed by Sec. 8, Ch. 184, Laws
relating to inclusion of mortgage lands, 1961.

81-912. (1805.75) Regulations concerning sale—forfeiture for non-payment—disposition of proceeds. At the time fixed for the sale, the lands shall be offered for sale at auction, in the order they appear in the notice of sale under the personal direction of the commissioner or the assistant commissioner, one of whom shall be present at the sale, and sold to the highest qualified bidder under the following restrictions: No lands shall be sold for less than the appraised value; tillable lands capable of producing agricultural crops shall not be sold for less than ten dollars (\$10.00) per acre, and lands principally valuable for grazing purposes shall not be sold for less than five dollars (\$5.00) per acre.

It is further provided that the lessee of the land need not make a higher bid than others, but shall if bidding an equal amount be given the preference. The lands shall be sold as nearly as practicable according to the subdivisions in which they are advertised, and care shall be taken not to subdivide any tract in such a way as to separate remaining portions from a water supply or from section lines or public highways. The sale may be adjourned from day to day until all the lands advertised have been offered for sale.

If any successful bidder at such sale refuses or neglects to make the initial payment required to be made on the land purchased by him, he shall forfeit to the state not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1000.00) to be determined by the state board of land commissioners according to the circumstances of the case. If such forfeiture is not paid when notice of the amount of the forfeiture has been served by the commissioner, the attorney general shall institute a suit for the recovery thereof in the name of the state of Montana.

The proceeds from the lands sold, including all subsequent payments on the principal, shall be credited to the permanent fund arising from the grant to which it belongs and shall become and forever remain an

inseparable and inviolable part thereof. All payments on interest shall be credited to the proper income fund and shall be available for use as provided by law.

History: En. Sec. 75, Ch. 60, L. 1927; amd. Sec. 1, Ch. 177, L. 1933; amd. Sec. 5, Ch. 184, L. 1961.

Amendment

The 1961 amendment deleted from the end of the first paragraph a sentence which read "These price limitations shall not apply to mortgage lands."

81-914. (1805.77) Repealed.

Repeal

This section (Sec. 77, Ch. 60, L. 1927; Sec. 1, Ch. 197, L. 1945), relating to sale

of mortgage lands on advertising for sealed bids, was repealed by Sec. 8, Ch. 184, Laws 1961.

CHAPTER 10—INVESTMENTS

Section 81-1001. Investment of permanent funds.

81-1005. Investment of income moneys.

81-1001. (1805.98) Investment of permanent funds. All moneys belonging to the public school permanent fund and to the other permanent funds of the educational, charitable and penal institutions of the state, and all permanent funds subject to the administration of the board under article XXI of the state constitution, shall be carried by the state treasurer as subfunds in the trust and legacy fund, and shall be safely invested by the state board of land commissioners in bonds of school districts within the state of Montana; in bonds of the several counties and cities of the state of Montana; in bonds of the state of Montana or of the United States; in capitol building bonds of the state of Montana, now issued or which may hereafter be issued; in bonds issued by the federal land banks, in interest-bearing warrants upon the general fund of the state and in interest-bearing warrants upon the general fund, the poor fund, the road fund, or upon the bridge fund of the several counties of the state of Montana; all of such investments to be subject to the regulations and limitations of this act.

History: En. Sec. 98, Ch. 60, L. 1927; amd. Sec. 2, Ch. 139, L. 1933; amd. Sec. 224, Ch. 147, L. 1963.

Amendment

The 1963 amendment inserted "shall be carried by the state treasurer as subfunds in the trust and legacy fund, and" after "state constitution."

81-1005. (1805.102) Investment of income moneys. Public school interest and income moneys and other income for which there is no immediate demand, may be invested in state general fund warrants and in county warrants upon the general fund, the poor fund, the road fund, or school district warrants, subject to the limitations prescribed in the preceding section; provided, however, that they shall not be invested in such warrants, unless such warrants will be payable at such time as to make the income available when the funds are to be paid out for the purposes for which they are intended.

History: En. Sec. 102, Ch. 60, L. 1927; amd. Sec. 225, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "Pub-

lic school interest and income moneys and other income" for "Moneys in the public school income fund and in other income funds" at the beginning of the section.

CHAPTER 14—STATE FORESTS—FORESTER—TIMBER SALES
—FIRE WARDENS

- Section 81-1403. State forester—appointment—compensation—term—assistants—bond.
81-1408. Duties of state forester concerning lumber cutting—scaling.
81-1410. Authority to receive moneys.

81-1403. (1830.3) State forester—appointment—compensation—term—assistants—bond. The governor, by and with the advice and consent of the senate, shall appoint a state forester to have general charge of all the state's forests. He shall be technically trained and experienced in forestry and a graduate of an accredited forestry school, and his salary shall not be more than ten thousand eighty dollars (\$10,080) per annum, at the discretion of the state land board, together with the actual, necessary expenses while engaged in outside work in connection with his office and its duties as defined by law and the regulations of the state board of land commissioners and the state board of forestry. Such expenses shall be payable monthly from the state's general fund and/or the appropriations made to those other boards to which he, by law, has been designated secretary or executive officer. His term of office shall be for four (4) years. With the consent and approval of the state board of land commissioners the state forester shall appoint and fix the salaries and expenses of such office help, district foresters, fire wardens, cruisers, scalers, slash disposal men, and such other trained and qualified assistants as may be necessary in the administration of the state forests and the forested lands within the state. Provided, however, that consent and approval of such appointments by any board shall be restricted to those appointments made for the purposes of that board as defined by law. He shall give a satisfactory bond to the state of Montana in the sum of ten thousand dollars (\$10,000) as a guarantee for the faithful performance of his duties.

History: En. Sec. 3, Ch. 179, L. 1925; amd. Sec. 1, Ch. 161, L. 1949; amd. Sec. 1, Ch. 192, L. 1953; amd. Sec. 1, Ch. 28, L. 1955; amd. Sec. 1, Ch. 94, L. 1957; amd. Sec. 5, Ch. 225, L. 1963.

The 1963 amendment substituted "shall not be more than ten thousand eighty dollars (\$10,080) per annum" in the second sentence for "shall not exceed seven thousand dollars (\$7,000.00) per annum."

Amendments

The 1957 amendment raised the salary of the state forester from \$6,000 to \$7,000 per annum.

Repealing Clause

Section 2 of Ch. 94, Laws 1957 repealed all acts and parts of acts in conflict therewith.

81-1408. (1830.8) Duties of state forester concerning lumber cutting—scaling. It shall be the duty of the state forester to supervise all the timber before it is cut, to secure the most complete utilization of all forest products consistent with the current lumbering practice. It shall be his duty to instruct and supervise the cruisers, forest wardens and scalers in the conduct of their work; and to fix and establish the standard practice in timber sales administration. He shall require that each merchantable log be scaled by the Scribner decimal C. log rule at the small end on the average diameter inside bark taken to the nearest inch, and that deduction be made for all apparent defect, or he shall fix and determine converting factors and units of measure for all forest products, which shall be as nearly as practical equivalent to the Scribner decimal C. log scale. Records of converting factors, units of measure and the scale of

logs shall be kept as a permanent public record showing the date of scale or measurement, the designation of the scale and the name of the scaler. Where the volume of timber involved is not in excess of one million (1,000,000) board feet log scale, the state forester is authorized to designate each tree to be cut and make a tree scale measurement of all trees to be sold.

History: En. Sec. 8, Ch. 179, L. 1925; amd. Sec. 1, Ch. 40, L. 1945; amd. Sec. 1, Ch. 219, L. 1955; amd. Sec. 1, Ch. 145, L. 1963.

Amendment

The 1963 amendment combined the former third and fourth sentences into the

present third sentence by inserting the word "or" between them; inserted "converting factors, units of measure and" near the beginning of the present fourth sentence; and corrected an apparent typographical error originating in the Laws of 1925.

81-1410. (1830.10) Authority to receive moneys. The state treasurer is hereby authorized to receive moneys that may be appropriated or allotted for the purposes named in section 81-1409, by the state, counties, municipalities, the United States government or any department thereof, or other organization or individual.

History: En. Sec. 10, Ch. 179, L. 1925; amd. Sec. 216, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted a second sentence reading, "The state treasurer shall deposit such moneys in a special

fund to be known as the forester's co-operative work fund, and the state auditor is hereby directed to draw his warrant or warrants for payments from said fund for the purposes aforesaid upon receipt of vouchers approved by the state forester."

CHAPTER 16—TIMBER SALES—GENERAL PROVISIONS

Section 81-1601. Sale of timber—fees for brush disposal and timber stand improvement.

81-1601. (1872) Sale of timber—fees for brush disposal and timber stand improvement. The state board of land commissioners shall have the power to sell timber on state lands, at such price per thousand feet as in its judgment shall be for the best interest of the state, but not otherwise; but no such sale of live timber shall be made at a less price than three dollars (\$3.00) per thousand feet for white pine, yellow pine and spruce and at a less price than one dollar and a half (\$1.50) per thousand feet for all other timber species. All timber sold or cut from state lands shall be cut and removed under such rules and regulations for the preservation of standing timber and the prevention of fires as the state board of land commissioners shall prescribe; in all cases the board must require the person cutting the timber to pile and burn or otherwise dispose of the brush and slashings in such manner as may be required. Before any sale shall be granted, the timber shall be estimated and appraised under the direction of the state forester, upon the request and subject to the approval of the state board of land commissioners, which estimates and appraisals shall show as nearly as may be the amount and values per thousand feet of all merchantable timber, together with a statement of the situation of the timber relative to risk from fires or damage of any kind, its distance from the nearest lake, stream or railroad, and its value and position as a protection to a watershed.

The state board of land commissioners may set fees for brush disposal on state lands. The board may also establish a fee for timber stand improvement on timber cut on state lands. Such fees shall be deposited in the earmarked revenue fund to the credit of the state forester.

History: Ap. p. Sec. 3560, p. 193, L. 1897; re-en. Sec. 2213, Rev. C. 1907; amd. Sec. 53, Ch. 147, L. 1909; amd. Sec. 4, Ch. 118, L. 1911; amd. Sec. 1, Ch. 26, L. 1919; re-en. Sec. 1872, R. C. M. 1921; amd.

Sec. 1, Ch. 132, L. 1933; amd. Sec. 219, Ch. 147, L. 1963.

Amendment

The 1963 amendment added the second paragraph.

CHAPTER 17—OIL AND GAS ON STATE LANDS—DISPOSAL OF

Section 81-1701. State oil and gas leases—reservations—royalty—waste.

81-1705. Reports of lessees.

81-1707. Rules and regulations—printing—distribution.

81-1709. Bond of lessees.

81-1701. (1882.1) State oil and gas leases—reservations—royalty—waste. The state board of land commissioners is hereby authorized and empowered to lease in such manner as it may determine, not inconsistent with the enabling act and the constitution, any state lands to which the title has vested in the state and in which the oil and gas rights are not reserved by the United States, for prospecting and exploring for oil and gas, mining, drilling, developing and removing the same upon the terms and conditions herein prescribed, to any person, association, corporation, domestic or foreign, or municipality qualified under the constitution and the laws of the state of Montana. This power and authority to lease state lands for such purposes shall extend to and include all lands owned by the state under navigable lakes and streams, and shall also extend to and include all those state lands which have been sold but in which the oil and gas rights have been reserved by the state of Montana; but in such cases and in all cases where the lands are under lease for grazing, agriculture or similar purposes, care shall be taken in issuing the oil and gas leases to protect the rights of the purchaser or lessee.

In every oil and gas lease granted pursuant to the terms hereof there shall be reserved unto the state of Montana the right to sell, lease, or otherwise dispose of the surface of the lands covered thereby, subject always to the rights and privileges granted unto the lessee under such oil and gas lease.

Oil and gas leases issued under the provisions of this act shall all be subject to the conditions that the lessee in conducting his explorations and mining or drilling operations shall use all reasonable precautions to prevent waste of oil or gas developed in the land or the entrance of water through wells drilled by him to the oil or gas sands or oil or gas bearing strata to the destruction or injury of the oil or gas deposits. Violations of any of these conditions shall constitute grounds for the forfeiture of the lease after hearing had thereon before the state board of land commissioners.

History: En. Sec. 1, Ch. 108, L. 1927; amd. Sec. 1, Ch. 90, L. 1943; amd. Sec. 1, Ch. 261, L. 1947; amd. Sec. 6, Ch. 184, L. 1961.

Amendment

The 1961 amendment deleted the former third and fourth paragraphs which read, "In the case of mortgage lands sold by the state on or subsequent to March 14, 1935, or hereafter sold by it, in which the oil and gas rights belong to and are reserved by and for the state, when the state leases such lands for oil and gas purposes, the holder of such lands under certificate of purchase or other contract, or deed from the state, shall be allowed a royalty of six and one-quarter per centum ($6\frac{1}{4}\%$) of the oil and gas produced by such lands, as provided by section 81-902, to be calculated on the same

basis as the royalty to be paid to the state as hereinafter provided, and to be paid by the lessee directly to the person or persons entitled thereto, said six and one-quarter per centum ($6\frac{1}{4}\%$) royalty to be deducted from the royalty reserved to the state.

"After the date of this act, all such certificate of purchase holders of mortgage lands shall be entitled to one-half ($\frac{1}{2}$) of all oil or gas lease rentals, bonus or penalty thereafter received by the state, and such one-half ($\frac{1}{2}$) of the oil or gas lease rentals, bonus or penalty shall be credited to the certificate of purchase until such certificate of purchase is paid in full, and thereafter such one-half ($\frac{1}{2}$) of the oil or gas rentals collected by the state board of land commissioners shall be paid to the owner."

81-1702. (1882.2) Area to be leased—limitations—term of leases, etc.

References

Cited or applied in State ex rel. Strandberg v. State Board of Land Commrs., 131 M 65, 307 P 2d 234, 235.

81-1704. (1882.4) Royalty—time for payment—computation.

Constitutionality

This section is not unconstitutional on the grounds that it does not obtain the full market value of the estate or interest disposed of as required by the constitution. State ex rel. Strandberg v. State Board of Land Commrs., 131 M 65, 307 P 2d 234. (Dissenting opinion, 131 M 65, 307 P 2d 234, 238.)

Royalty Rate

When oil lands are leased on a royalty basis and a cash bonus, the bonus constitutes rental for an estate or interest in the land and the legislature in leasing oil lands is under obligation to obtain the full market value of the estate or interest disposed of on a rental basis, as well as for the sale of the land itself. State ex rel. Strandberg v. State Board of Land Commrs., 131 M 65, 307 P 2d 234, 237. (Dissenting opinion, 131 M 65, 307 P 2d 234, 238.)

Where in the leasing of lands for oil and gas, there was a bid carrying a royalty of $16\frac{2}{3}\%$ with a bonus of \$39,040 and another bid carrying a royalty of $12\frac{1}{2}\%$

with a bonus of \$68,000, the board of land commissioners was not authorized to accept the bid carrying the royalty of $16\frac{2}{3}\%$ since the legislature has the responsibility of determining the method of arriving at the market value of leases, and by this section the legislature has determined that the royalty basis shall be $12\frac{1}{2}\%$. In the instant case it is impossible to determine whether the bid carrying the higher royalty but lesser bonus to be better than the bid carrying the $12\frac{1}{2}\%$ royalty but a higher bonus, in advance of drilling. State ex rel. Strandberg v. State Board of Land Commrs., 131 M 65, 307 P 2d 234, 236. (Dissenting opinion, 131 M 65, 307 P 2d 234, 238.)

Under the constitution it is the legislature and not the land board that must fix the rules governing the sale and leasing of state land, and the method of arriving at the market value thereof. State ex rel. Strandberg v. State Board of Land Commrs., 131 M 65, 307 P 2d 234, 236. (Dissenting opinion, 131 M 65, 307 P 2d 234, 238.)

81-1705. (1882.5) Reports of lessees. On or before the last day of each month every holder of a producing oil or gas lease shall make a report to the commissioner of state lands for the preceding calendar month, which report shall be in such form as the state board of land commissioners may prescribe. Such report shall show the amount of oil or gas produced and saved during such preceding month, the price obtained,

the total amount of all sales, and such additional information as may be required and shall be signed by the lessee or some responsible person having knowledge thereof, and shall be accompanied by payment of the amount due the state as royalty for the month covered by the report, unless the state's royalty is being or has been paid direct by the purchaser thereof, provided, that where the amount of royalty due from any lease is determined by the state board of land commissioners to be so small as to make it uneconomical to collect monthly, the board may authorize royalty payments to be made semi-annually.

History: En. Sec. 5, Ch. 108, L. 1927;
amd. Sec. 2, Ch. 122, L. 1953; amd. Sec. 1,
Ch. 171, L. 1963.

Amendment

The 1963 amendment added the proviso at the end of the section.

81-1707. (1882.7) Rules and regulations—printing—distribution. The board shall have the power and authority to prescribe such rules and regulations and to do and perform all acts and things not inconsistent with the enabling act, the constitution, and the statutes of this state as it may deem necessary and proper relating to the leasing of state lands for oil and gas exploration and development. The board shall formulate rules and regulations, not inconsistent with law, governing the leasing of state lands for oil and gas exploration and development which shall be compiled and printed periodically. Copies of the rules and regulations and notices of changes therein shall be made available to any person desiring a copy thereof at a reasonable cost to be fixed by a rule of the board.

History: En. Sec. 7, Ch. 108, L. 1927;
amd. Sec. 1, Ch. 144, L. 1961.

Repealing Clause

Section 2 of Ch. 144, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1961 amendment added the second and third sentences.

81-1709. (1882.9) Bond of lessees. The state board of land commissioners shall require lessees of oil and gas leases and assigns thereof to furnish bonds to the state in form and substance prescribed by law or by regulations of the board and in amount, or amounts, adequate to indemnify the state against loss, damage or detriment by reason of failure of the lessee to fully discharge the obligations contained in any lease or assignment thereof, including the payment of any money penalties fixed by the board; provided, that no bond in excess of twenty thousand dollars (\$20,000.00) shall be required under any one lease for any one year; and provided further that any lessee of oil and gas leases or any assignee of such leases, may, at his discretion, furnish one bond in a sum to be fixed by the board not to exceed fifty thousand dollars (\$50,000.00) covering all leases in which any interest is acquired, in which event separate bonds relating to individual leases or interests therein shall not be required.

History: En. Sec. 9, Ch. 108, L. 1927;
amd. Sec. 1, Ch. 186, L. 1957.

Repealing Clause

Section 2 of Ch. 186, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1957 amendment added the "and provided further clause."

Effective Date

Section 3 of Ch. 186, Laws 1957 provided the act should be in effect from

and after its passage and approval. Approved March 8, 1957.

81-1715. (1882.15) Advertising for bids on re-lease of producing oil, etc.**References**

Cited or applied in State ex rel. Strandberg v. State Board of Land Commrs., 131 M 65, 307 P 2d 234, 235.

81-1725. Leasing of state lands for underground storage, etc.**Constitutionality**

This statute is constitutional. State ex

rel. Hughes v. State Board of Land Commrs., 137 M 510, 353 P 2d 331, 335.

CHAPTER 19—SATISFACTION OF FARM MORTGAGE LOANS

(Repealed—Section 8, Chapter 184, Laws of 1961)

81-1901, 81-1902. (1937, 1939) Repealed.**Repeal**

These sections (Secs. 10, 12, Ch. 124, L. 1917), relating to satisfaction of farm

mortgage loans, were repealed by Sec. 8, Ch. 184, Laws 1961.

CHAPTER 20—CAREY LAND ACT BOARD—STATE ENGINEER**81-2001. (1949) Creation of board.****Separation of Land from Water Rights**

Sale, without water rights, by land company of Carey Act lands which had been acquired on application showing that lands were served with water from a certain

canal, was not an abandonment by the company of water from such canal. Bruffey v. Big Timber Creek Canal Co., 137 M 339, 351 P 2d 606, 609.

81-2011. (1958) Repealed.**Repeal**

This section (Sec. 9, Ch. 114, L. 1903; Sec. 1, Ch. 118, L. 1913), relating to the salary and annual report of the state engineer, was repealed by Sec. 1, Ch. 129, Laws 1963, and by Sec. 242, Ch. 147, Laws

1963. Section 6, Ch. 225, Laws 1963, purported to amend this section; however, under the rule of section 43-515, the purported amendment was void and did not revive the section.

81-2014. (1961) Repealed.**Repeal**

This section (Sec. 12, Ch. 114, L. 1903; Sec. 1, Ch. 128, L. 1911), relating to the

salary of the assistant secretary of the board, was repealed by Sec. 1, Ch. 129, Laws 1963.

81-2016. (1963) Repealed.**Repeal**

This section (Sec. 14, Ch. 114, L. 1903),

relating to the Carey Land Act fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

CHAPTER 21—RECLAMATION OF ARID LANDS**81-2112. (1977) Co-operative reclamation projects.****References**

Cited in Bruffey v. Big Timber Creek Canal Co., 137 M 339, 351 P 2d 606, 609.

81-2118. (1983) Water rights—foreclosure of lien, etc.**Appurtenant Water Rights**

The purpose of making the water right appurtenant to the land and inseparable therefrom was to retain an enforceable lien on both the land and water right, and that after the lien is satisfied the water rights may be transferred to other lands. *Bruffey v. Big Timber Creek Canal Co.*, 137 M 339, 351 P 2d 606, 609.

Separation of Land and Water Rights

Sale, without water rights, by land company of Carey Act lands which had been acquired on application showing that lands were served with water from a certain canal was not an abandonment by the company of water from such canal. *Bruffey v. Big Timber Creek Canal Co.*, 137 M 339, 351 P 2d 606, 609.

81-2122. (1987) Repealed.**Repeal**

This section (Sec. 23, Ch. 105, L. 1905),

relating to fees payable to the board, was repealed by Sec. 242, Ch. 147, Laws 1963.

81-2124. (1989) Repealed.**Repeal**

This section (Sec. 25, Ch. 105, L. 1905), relating to the disposition of proceeds of

sale or lease of lands, was repealed by Sec. 242, Ch. 147, Laws 1963.

TITLE 82—STATE OFFICERS, BOARDS AND DEPARTMENTS

- Chapter 1. State controller, 82-106, 82-107, 82-109 to 82-109.4, 82-110, 82-112.
3. Athletic commission, state, 82-308.
 5. Clerk of supreme court, 82-503.
 7. Embalmers and funeral directors, state board of, Repealed—Section 24, Chapter 41, Laws of 1963.
 10. Examiner, state, 82-1008, 82-1011, 82-1014 to 82-1016.
 11. Examiners, state board of—state printing contract and supplies, 82-1101, 82-1105, 82-1131, 82-1131.1, 82-1137, 82-1138, 82-1152.
 12. Fire marshal, state, 82-1231.
 13. Governor—powers—records—secretary, 82-1309, 82-1310.
 15. Hail insurance, state board of, 82-1505, 82-1507, 82-1511, 82-1516, 82-1517, 82-1519.
 16. Laboratory commission, Repealed—Section 33, Chapter 271, Laws of 1963.
 19. Purchasing department and agent, 82-1902 to 82-1906, 82-1909, 82-1916, 82-1919, 82-1924 to 82-1926.
 20. Reporters of decisions of supreme court—publication and distribution of reports, 82-2002, 82-2004.
 21. Intergovernmental cooperation, 82-2112, 82-2113.
 22. Secretary of state, 82-2212.
 31. State agency for surplus property, 82-3102, 82-3104 to 82-3106.
 32. State records, 82-3205.
 33. Department of administration, 82-3301 to 82-3322.
 34. Open meetings of public agencies, 82-3401 to 82-3403.

CHAPTER 1—STATE CONTROLLER

- Section 82-106. State controller—appointment—qualifications.
- 82-107. Controller's oath of office—bond.
- 82-109. Duties of controller—expenditure control.
- 82-109.1. Authorizations for salary payments and operating expenditures—submission to state controller.
- 82-109.2. Pre-audit of liquidated or settled claims—transmittal of unliquidated or unsettled claims.
- 82-109.3. Form of claims—disapproval by controller—appeal to board of examiners.
- 82-109.4. Salary schedules maintained by controller.
- 82-110. Duties of controller—to act with state auditor and state examiner—uniform accounting system—examinations.
- 82-112. When a budget of contemplated expenditures required by federal agency as a condition of federal aid—director of budget to first submit budget to governor.

82-102. (306) Repealed.

Repeal

This section (Sec. 2, Ch. 86, L. 1909; Sec. 5, Ch. 194, L. 1951), relating to

powers and duties of state controller, and examination of state institutions, was repealed by Sec. 3, Ch. 81, Laws 1961.

82-106. State controller—appointment—qualifications.—The office of state controller for the state of Montana is hereby created and established. The state controller shall be appointed by the governor with the advice and consent of the senate. He shall be responsible to the governor and shall serve at the pleasure of the governor. Said state controller (hereinafter referred to as the controller) shall be a qualified elector of Montana and shall be selected with special reference to his training, experience, ability, and knowledge of the principles and practices of public finance and governmental accounting.

History: En. Sec. 1, ch. 194, L. 1951; amd. Sec. 1, Ch. 98, L. 1961.

Amendment

The 1961 amendment substituted the second and third sentences for sentences which read: "It shall be the duty of the governor, not later than the first day of April, 1951, to appoint a competent person to discharge the duties of said office until the next meeting of the senate, when

he shall nominate and, by and with the advice and consent of the senate, shall appoint a competent person to fill such office. Succeeding appointments shall be made on or before the last day of January during the biennial session of the legislative assembly next preceding the commencement of the term for which the appointment is made"; and substituted "public finance" for "public budgeting" near the end of the section.

82-107. Controller's oath of office—bond. The controller shall take the constitutional oath of office and shall execute to the state of Montana a bond in the penal sum of fifty thousand dollars (\$50,000.00), to be approved by the state board of examiners.

History: En. Sec. 2, Ch. 194, L. 1951; amd. Sec. 2, Ch. 98, L. 1961.

Amendment

The 1961 amendment deleted, at the beginning of the section, sentences reading: "The controller shall be appointed

for a term of eight (8) years, commencing on the first of April next following the date of his appointment, and shall be ineligible to succeed himself. He shall receive a salary of seven thousand dollars (\$7,000.00) per annum, and all necessary traveling expenses."

82-109. Duties of controller—expenditure control. (a) The controller shall establish a system of financial control to the end that the functioning of the various departments of the state may be improved, that duplications of work done by different state departments and employees may be eliminated, the public service improved, and the cost of government reduced.

(b) It shall be the duty of the controller to apply expenditures against cash funds wherever possible before using the general fund appropriations.

(c) The controller may, when authorized by the governor, require a quarterly allotment system of expenditure for any office, department, bureau, commission, institution or agency. The amount of the respective appropriation made by the legislative assembly shall then, except with respect to items of capital outlay and repairs and replacement, be made available to such office, department, bureau, commission, institution or agency in quarterly allotments, provided, however, that the quarterly allotment shall be based on the requirements of that office, department, bureau, commission, institution or agency during that quarter based on previous experience of that office, department, bureau, commission, institution and agency and not on a pro rata quarterly basis.

History: En. Sec. 4, Ch. 194, L. 1951; amd. Sec. 1, Ch. 101, L. 1953; amd. Sec. 8, Ch. 158, L. 1959.

Amendment

The 1959 amendment deleted most of former subd. (a). For previous text see parent volume.

82-109.1. Authorizations for salary payments and operating expenditures—submission to state controller. All authorizations for salary payments, operating expenditures, including all travel, or capital expenditures, including repairs and replacements, shall be given by the officer or governing board of the department concerned, and a record shall be kept by such officer or governing board of all such authorizations and expenditures. Claims for any such expenditures must be submitted to

the state controller and must bear the signature of the authorizing officer or employee, certifying the following: "This claim is approved for the sum of \$_____. It is mathematically and clerically correct, a proper and necessary expense, and a legal charge against appropriation or fund No. _____."

History: En. Sec. 1, Ch. 97, L. 1961.

Title of Act

An act to relieve the state board of examiners of the duty to approve liquidated claims and to provide for the pre-audit of such claims by the state controller after authorization of the expenditure by the officer or governing board of the department concerned; to amend the following sections to delete the requirement that the board of examiners process claims for expenditures: section 79-104, Revised Code of Montana, 1947, relating to the state auditor, section 79-202, Revised Codes of Montana, 1947, relating to the state treasurer, sections 82-1101, 82-1105, and 82-1152, Revised Codes of Montana, 1947, relating to the state board of examiners, sections 93-306 and 93-314, Revised Codes of Montana, 1947, relating to district judges, sections 94-9825 and 94-9826, Revised Codes of Montana, 1947, relating to the board of pardons, section 44-410, Revised Codes of Montana, 1947, relating to the state law library, sections 44-514 and 44-515, Revised Codes of Montana, 1947, relating to the historical society library, section 19-121, Revised Codes of Montana, 1947, relating to the

Montana fine arts commission, section 23-1815, Revised Codes of Montana, 1947, relating to the state board of canvassers, section 26-123, Revised Codes of Montana, 1947, relating to the fish and game commission, section 32-1620, Revised Codes of Montana, 1947, relating to the state highway commission, sections 46-202, 46-224, 46-228, Revised Codes of Montana, 1947, relating to the livestock sanitary board, sections 46-1909 and 46-1914, Revised Codes of Montana, 1947, relating to the livestock commission, section 46-2306, Revised Codes of Montana, 1947, relating to the grass conservation commission, section 59-540, Revised Codes of Montana, 1947, relating to the board of examiners, section 77-151, Revised Codes of Montana, 1947, relating to the national guard, section 80-747, Revised Codes of Montana, 1947, relating to the state prison, section 80-748, Revised Codes of Montana, 1947, relating to county sheriffs and section 82-2212, Revised Codes of Montana, 1947, relating to the secretary of state; and to repeal sections 59-541, 82-1109, 82-1110, 82-1111, 82-1112, 82-1120, 46-1910 and 46-1911, Revised Codes of Montana, 1947; and containing a repealing clause.

82-109.2. Pre-audit of liquidated or settled claims—transmittal of unliquidated or unsettled claims. The state controller shall pre-audit all liquidated or settled claims against the state, including claims by transportation companies arising from state transportation requests, ascertaining that (1) the proper authorizing signature is present, (2) the claim and supporting documents are mathematically and clerically accurate, (3) the proper appropriation and fund is charged and that the appropriation is available and adequate, and (4) the expenditure is not illegal. If the volume of claims will not permit such audit of each claim, item (2) above may be accomplished on a spot-check basis. The pre-auditing conducted by the state controller shall be concerned only with the form and accuracy of the claim and supporting documents, and the availability of the funds, and in no event shall the state controller interpose his judgment regarding the wisdom or expediency of any item or items of expenditure. If no appropriation is available for the payment of a settled or liquidated claim, the controller shall audit it and, if it is a valid claim, transmit it to the governor through the office of director of the budget for presentation to the legislative assembly.

Any unliquidated or unsettled claims submitted to the state controller shall be transmitted to the state board of examiners to be processed as provided by law.

History: En. Sec. 2, Ch. 97, L. 1961; ing claims by transportation companies
amd. Sec. 29, Ch. 271, L. 1963. arising from state transportation requests”
near the beginning of the section.

Amendment

The 1963 amendment inserted “includ-

82-109.3. Form of claims—disapproval by controller—appeal to board of examiners. The state controller may prescribe the claim form and may establish in writing, rules and regulations not inconsistent with law governing the preparation, submittal and processing of claims. All claims shall be processed in the order of their presentation, and all claims disapproved by the state controller shall be returned to the operating agency with an explanation in writing of why the claim was disapproved. The officer or governing board of a department which is aggrieved by the disapproval of a claim by the controller, may appeal to the state board of examiners.

History: En. Sec. 3, Ch. 97, L. 1961.

82-109.4. Salary schedules maintained by controller. The state controller shall maintain a schedule of all salaries paid to personnel of civil executive state offices and shall only approve payroll claims agreeing with that schedule. All changes in personnel or salary status shall be authorized as provided by law, and the state controller shall alter his schedule accordingly when notified by the authorizing agency. However, no changes in personnel or salary status shall be authorized that will cause a department to exceed its appropriation or that will result in a deficiency or supplemental appropriation request to the legislative assembly.

History: En. Sec. 4, Ch. 97, L. 1961.

82-110. Duties of controller—to act with state auditor and state examiner—uniform accounting system—examinations. (a) The controller, acting with the state examiner, shall prescribe and install uniform accounting and reporting for the several state boards, bureaus, departments, commissions and institutions in addition to those enumerated in section 82-102 hereof, showing the receipt, use and disposition of all public money and property, and shall develop plans for improvements and economies in the organization and operation thereof which shall be submitted to the respective heads of such boards, bureaus, departments, commissions and institutions. Copies of all such plans shall be delivered to the governor and additional copies shall be retained in the office of the controller for inspection by the members of the legislative assembly.

(b) The controller shall receive copies of all audits and reports of the state examiner relating to all state departments, boards, bureaus, institutions and agencies and, without duplicating work done in preparing such audits and reports, he shall have the power and it shall be his duty to examine into all financial affairs of every state board, commission, bureau, department and institution for the purpose of developing plans for improvements and economies in the organization and operation thereof,

and for the purpose of enabling him to properly perform any of the duties imposed upon him by this act.

(c) and (d). * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 194, L. 1951;
amd. Sec. 9, Ch. 158, L. 1959.

Amendment

The 1959 amendment deleted the words "state auditor and" where they appeared before "state examiner" near the beginning of each of subds. (a) and (b).

Compiler's Note

Section 82-102, referred to in subsection (a), was repealed by Sec. 3, Ch. 81, Laws 1961.

82-112. When a budget of contemplated expenditures required by federal agency as a condition of federal aid—director of budget to first submit budget to governor. Whenever any agency of the federal government shall require as a condition to obtaining federal aid that the state agency intrusted with the administration of such aid shall submit a budget of the contemplated expenditures for administrative purposes, the proposed budget for such expenditures shall, before it is submitted to the federal authorities for approval, first be submitted by such state agency to the director of the budget. The director of the budget shall then transmit said budget to the governor who shall approve the same or shall modify or alter it so as to meet his approval and shall submit the budget as approved by him to the legislative assembly; when the legislative assembly is not in session and additional and unanticipated federal aid becomes available, requiring an amended and/or supplemental appropriation request, then any agency, department or institution receiving such federal aid shall submit said amended and/or supplemental administrative appropriation request through the director of the budget to the governor for his approval before submission to the appropriate federal agency.

History: En. Sec. 1, Ch. 210, L. 1953;
amd. Sec. 10, Ch. 158, L. 1959.

to the legislative assembly for approval" and substituted "director of the budget" near the end of the section for "state controller."

Amendment

The 1959 amendment, at the end of the first sentence, substituted "by such state agency to the director of the budget" for "to the state controller in conformity with section 82-109(a)"; substituted the portion of the second sentence preceding the semicolon therein for "The state controller shall then transmit said budget

Repealing Clause

Section 11 of Ch. 158, Laws 1959 read "That sections 79-1002, 79-1003, 79-1004, 79-1004.1, 79-1005, and 79-1010, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith are hereby repealed."

CHAPTER 3—ATHLETIC COMMISSION, STATE

Section 82-308. Report of ticket sales—tax on gross receipts—disposition of tax moneys received.

82-308. (4559) Report of ticket sales—tax on gross receipts—disposition of tax moneys received. Every club, corporation or association which may hold or exercise any of the privileges conferred by this act, shall, within twenty-four hours after the determination of any boxing, sparring or wrestling contest or exhibition, furnish to the commission a written report, duly verified by one of its officers, showing the number of tickets sold for such boxing, sparring or wrestling contest or exhibition and the amount of gross proceeds thereof, and such other matters as the com-

mission may prescribe, and shall also within the said time pay to the county treasurer a tax of five per centum (5%) of its total gross receipts after deducting the federal admission tax if any from the sale of tickets of admission to such boxing, sparring or wrestling match or exhibition, which shall be transmitted to the state treasurer by the county treasurer within a period of ten (10) days after its collection and be applied to the payment of the expenses of the commission, and the salary of the secretary of the commission, as herein provided. And the money so collected shall be paid to the state treasurer to be kept and held in the earmarked revenue fund and used exclusively for the purposes and expenses above specified and as prescribed in section 78-302. Such funds to be drawn upon and expended only upon proper and legal claims. All such moneys in the said fund from time to time may be invested by the state treasurer in any manner provided for by law for the investment of the state moneys.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4559, R. C. M. 1921; amd. Sec. 8, Ch. 103, L. 1927; amd. Sec. 2, Ch. 171, L. 1953; amd. Sec. 162, Ch. 147, L. 1963; amd. Sec. 30, Ch. 271, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 147 and once by Ch. 271. Neither amendatory act mentioned nor included the changes made by the other. Since the amendments do not appear to conflict, however, the compiler has made a composite section incorporating the changes made by both.

Amendments

Chapter 147, Laws 1963, substituted "in the earmarked revenue fund" in the second sentence for "in a separate and special fund to be designated as the 'veterans'

memorial fund'"; deleted "made against the fund, first presented to and approved by the state board of examiners" from the end of the next to last sentence; and substituted "such moneys" for "money" near the beginning of the last sentence.

Chapter 271, Laws 1963, substituted "for the purposes and expenses above specified and as prescribed in section 78-302" at the end of the second sentence for "for the purposes herein provided" and a sentence reading, "The moneys so received and held by the state treasurer in such special fund shall be used and devoted for the expenses above specified and the balance to be held and retained exclusively for the use of the veterans' memorial fund commission as prescribed in section 78-302"; and deleted from the end of the next to last sentence the words "first presented to and approved by the state board of examiners."

CHAPTER 4—ATTORNEY GENERAL

82-401. (199) General duties.

Effect of Opinion

While executive construction of the law, acquiesced in by the legislative assembly, is not binding on the court, yet such in-

terpretation is persuasive and will be upheld if not erroneous. *State ex rel. Ebel v. Schye*, 130 M 537, 305 P 2d 350, 353.

82-405. (202) Repealed.

Repeal

This section (Sec. 1, Ch. 13, L. 1907; Sec. 1, Ch. 77, L. 1915; Sec. 1, Ch. 116,

L. 1917; Sec. 1, Ch. 112, L. 1919), relating to assistant attorneys general, was repealed by Sec. 1, Ch. 129, Laws 1963.

82-407, 82-408. (204, 205) Repealed.

Repeal

These sections (Sec. 1, Ch. 77, L. 1915), relating to a law clerk and stenographers

in the attorney general's office, were repealed by Sec. 1, Ch. 129, Laws 1963.

CHAPTER 5—CLERK OF SUPREME COURT

Section 82-503. Fees.

82-503. (372) Fees. He must collect in advance the following fees: For filing the transcript on appeal, in each civil case appealed to the supreme court, ten dollars (\$10.00) payable by the appellant, and five dollars (\$5.00) payable by respondent, at the time of his appearance, in full for all services rendered in each case, up to the remittitur to the court below; for filing petition for any writ, ten dollars (\$10.00), in full for all services rendered in each cause; for certificate of admission as attorney and counselor, five (\$5.00); for making transcripts, copies of papers or record, fifteen cents (15¢) per folio; for comparing any document requiring a certificate, five cents (5¢) per folio; for each certificate under seal, one dollar (\$1.00).

All fees collected by him must be paid into the state treasury, all of which shall be credited to the credit of the state general fund.

History: En. Sec. 872, Pol. C. 1895; re-en. Sec. 301, Rev. C. 1907; re-en. Sec. 372, R. C. M. 1921; amd. Sec. 1, Ch. 156, L. 1939; amd. Sec. 1, Ch. 112, L. 1943; amd. Sec. 87, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "gen-

eral fund" for "law library fund" at the end of the section.

Unauthenticated Copies of Opinions

Clerk is not required to make a charge for uncertified and unauthenticated copies of opinions. *Anderson v. Hinman*, 138 M 397, 357 P 2d 895, 902.

82-504. (373) Duties.**Fees Received by Clerk**

The state is entitled to any moneys collected by the clerk while acting in his official capacity and performing the duties enumerated and the converse is

equally true that the state is not entitled to any fees except those set by law. *Anderson v. Hinman*, 138 M 397, 357 P 2d 895, 901.

82-505. (374) Settlements, when and how made.**Fees for Copies of Opinions**

Charges for furnishing uncertified and unauthenticated copies of opinions by the

clerk of court are not required to be paid into the state treasury. *Anderson v. Hinman*, 138 M 397, 357 P 2d 895, 902.

CHAPTER 7—EMBALMERS AND FUNERAL DIRECTORS,
STATE BOARD OF

(Repealed—Section 24, Chapter 41, Laws of 1963)

82-701 to 82-711. Repealed.**Repeal**

These sections (Secs. 1 to 9, 11, 12, Ch. 67, L. 1941; Sec. 1, Ch. 151, L. 1943), relating to embalmers and funeral directors, were repealed by Sec. 24, Ch. 41, Laws 1963. For present law, see sections

66-2701 to 66-2717. Sections 136 and 137, Ch. 147, Laws 1963, purported to amend sections 82-702 and 82-709, respectively; however, under the rule of section 43-515, the amendments were void and did not revive the sections.

CHAPTER 10—EXAMINER, STATE

Section 82-1008. Examination of accounts of cities, towns and certain school districts, and fire districts.

82-1011. Salary and expenses.

82-1014. Examination of accounts and books of state institutions.

82-1015. Duty of fiscal officers and other employees to aid in examination.

82-1016. Report of examination and audit.

82-1008. (215) Examination of accounts of cities, towns and certain school districts, and fire districts. The state examiner in addition to the duties now imposed upon his office, shall have the power and authority and it shall be his duty, to make at least one (1) examination each year of the books and accounts of all incorporated cities and towns.

The state examiner shall have the power and authority, and it shall be his duty, to make at least one (1) examination during each fiscal year of the books and accounts of all school districts of the first and second class and of third class districts maintaining a high school, in like manner as is now required by law for the examination of the books and accounts of state and county officers.

For such examination a fee of seven dollars fifty cents (\$7.50) per hour per man shall be charged and said fee must be paid by such district into the state treasury and the state treasurer shall accredit such payment to the special examiners' fund.

A copy of the examiner's report shall be filed with the county superintendent of schools, the state superintendent of public instruction, and the clerk of the school district, and any citizen of the state of Montana shall have the right to inspect, copy out and publish any of the facts therein contained.

The state examiner shall have the power and authority and it shall be his duty to make at least one (1) examination during each fiscal year the books and accounts of all fire districts and volunteer fire departments created and existing in unincorporated areas, towns and villages supported by a mill levy.

For such examination a fee of seven dollars fifty cents (\$7.50) per hour per man shall be charged and said fee shall be paid by the fire district or fire department into the state treasury and credited by the state treasurer to the earmarked revenue fund.

A copy of such audit shall be filed with the clerk and recorder of the county in which such fire district or fire department exists.

History: En. Sec. 1, Ch. 84, L. 1913; re-en. Sec. 215, R. C. M. 1921; amd. Sec. 1, Ch. 164, L. 1937; amd. Sec. 1, Ch. 169, L. 1955; amd. Sec. 1, Ch. 137, L. 1959; amd. Sec. 1, Ch. 125, L. 1963; amd. Sec. 1, Ch. 141, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 125 and once by Ch. 141. Neither amendatory act mentioned nor included the changes made by the other. Since the amendments do not appear to conflict, however, the compiler has made a composite section incorporating the changes made by both.

Amendments

The 1959 amendment increased the fee set out in the third paragraph from \$30 to \$60 per day per man, deleted the words "together with actual transportation expense" which followed "per day per man" in the third paragraph, and inserted in the

third paragraph the words "shall be charged and the said fee."

Chapter 125, Laws 1963 substituted "seven dollars fifty cents (\$7.50) per hour" for "sixty dollars (\$60) per day" in the third paragraph; and added the fifth, sixth, and seventh paragraphs.

Chapter 141, Laws 1963, deleted a proviso reading, "provided, however, that the trustees of any school district must, during the month of June of each calendar year, notify the state examiner if such examination will be required, in which event it shall be the duty of the state examiner to make an examination of such school district during the fiscal year following receipt of said notice" at the end of the second paragraph; deleted a former fourth paragraph which read: "In lieu of the examination by the state examiner as above provided, said school districts may provide for the examination of the books and accounts thereof by a qualified public

accountant of the state of Montana"; and deleted the words "or accountant's" following the word "examiner's" near the beginning of the present fourth paragraph.

Repealing Clauses

Section 2 of Ch. 137, Laws 1959 and Sec. 2 of Ch. 141, Laws of 1963 repealed all acts and parts of acts in conflict therewith.

82-1011. (218) Salary and expenses. The salary of the state examiner, for all services rendered in any capacity whatever, shall be not more than ten thousand dollars (\$10,000) per year, and in addition thereto the state shall pay the necessary office and travel expenses of himself and assistants.

History: En. Sec. 1, Ch. 149, L. 1907; Sec. 213, Rev. C. 1907; amd. Sec. 1, Ch. 93, L. 1911; re-en. Sec. 218, R. C. M. 1921; amd. Sec. 1, Ch. 98, L. 1953; amd. Sec. 7, Ch. 225, L. 1963.

Amendment

The 1963 amendment substituted the provision for a maximum salary of \$10,000 for a provision fixing the salary at \$7,000.

82-1012. (219) Repealed.

Repeal

This section (Sec. 1, Ch. 149, L. 1907; Sec. 2, Ch. 93, L. 1911; Sec. 1, Ch. 96, L. 1929; Sec. 1, Ch. 180, L. 1939), relating

to assistants, deputies, and clerks in the examiner's office, was repealed by Sec. 1, Ch. 129, Laws 1963.

82-1014. Examination of accounts and books of state institutions. The state examiner is hereby directed to examine and audit each fiscal year the accounts and books of the state soldiers' home, state hospital, state prison, state tuberculosis sanitarium, home for senile men and women, state industrial school, state training school and hospital, Montana children's center, state vocational school for girls, state school for the deaf and blind and the various units of the university of Montana, and has authority to employ such clerical, accounting and other personnel as may be deemed necessary by him to carry out the provisions of this act. Such examination shall include, within reason, but not limited to, the verification of all fees collected and their disposition, a statement of all income including federal and private grants, the tabulation of expenditures made from each of the appropriations granted by the legislative assembly, the consideration of all claims and expenditures as to their fund allocation and validity, the analysis of the sources of funds applied to the redemption of revenue bonds outstanding, the segregation of expenses allocated to buildings and activities designated as self liquidating, and any investigation as may be requested by the governing boards of the institutions.

The state examiner shall also conduct an annual examination and audit of the office of state controller, ex officio state purchasing agent. Such examination shall include the verification of all fees collected and their disposition, and shall also include an examination and appraisal of the procedures followed by the purchasing division for the purchase of supplies and capital equipment for state agencies.

History: En. Sec. 1, Ch. 279, L. 1959; amd. Sec. 1, Ch. 81, L. 1961.

thereafter; repealing all acts and parts of acts in conflict therewith; and providing for an effective date.

Title of Act

An act directing the state examiner to examine the accounts and books of the university system for the biennium ending June 30, 1959 and each biennium

Amendment

The 1961 amendment inserted "each fiscal year" in the first sentence of the first paragraph; inserted "the state sol-

diers' home, state hospital, state prison, state tuberculosis sanitarium, home for senile men and women, state industrial school, state training school and hospital, Montana children's center, state vocational school for girls, state school for the deaf and blind and" in the first sentence of the first paragraph; deleted "system" after "university of Montana" in the first sentence of the first paragraph; deleted "for the biennium ending June 30, 1959,

and each biennium thereafter" after "university of Montana" in the first sentence of the first paragraph; inserted "a statement of all income including federal and private grants" in the second sentence of the first paragraph; substituted "the governing boards of the institutions" for "the Montana state board of education" at the end of the first paragraph; and added the second paragraph.

82-1015. Duty of fiscal officers and other employees to aid in examination. It shall be the duty of the fiscal officer and other employees of each educational unit to furnish to the state examiner or his representative, when requested by him, all information, records, and books of account required in the course of the examination, and to render such assistance as may be required.

History: En. Sec. 2, Ch. 279, L. 1959.

82-1016. Report of examination and audit. The state examiner shall report to the governor and the governing boards of the various institutions, the results of such examination and audit, including any comments, criticism, and recommendations, which report shall be available to the legislative council and legislative assembly.

History: En. Sec. 3, Ch. 279, L. 1959; amd. Sec. 2, Ch. 81, L. 1961.

Amendment

The 1961 amendment substituted "the governing boards of the various institutions" for "the state board of education of the state of Montana", and inserted the words "including any comments, criticism, and recommendations."

Repealing Clauses

Section 4 of Ch. 279, Laws 1959 re-

pealed all acts and parts of acts in conflict therewith.

Section 3 of Ch. 81, Laws 1961 read "Section 82-102, Revised Codes of Montana, 1947, is repealed."

Effective Date

Section 5 of Ch. 279, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 17, 1959.

CHAPTER 11—EXAMINERS, STATE BOARD OF—STATE PRINTING CONTRACT AND SUPPLIES

- Section 82-1101.** Board, how composed.
82-1105. Records.
82-1131. Advertising for bids—when required—contracts—requirements—advertising—prohibiting subterfuge to avoid intent of this act.
82-1131.1. Repeal clause.
82-1137. State printing—union label—requirements of responsibility—state preferences.
82-1138. Penalty.
82-1152. Affidavit of printer—allowance of claims.

82-1101. (232) Board, how composed. The governor, secretary of state, and attorney general constitute a board of examiners. This board is not required to examine settled or liquidated claims for expenditures of any office or department of state government.

History: Sections 232 to 253 were enacted as Sections 1 to 21, pp. 183 to 187, L. 1891; re-en. Secs. 680 to 701, Pol. C. 1895; appearing as Secs. 226 to 247, Rev. C. 1907; re-en. Sec. 232, R. C. M. 1921; amd. Sec. 7, Ch. 97, L. 1961. Cal. Pol. C. Secs. 654-685.

Amendment

The 1961 amendment substituted the second sentence for the following: "with power to examine all claims against the state, except salaries or compensation of officers fixed by law, and perform such

other duties as may be prescribed by law. No claim against the state, except salaries and compensation of officers fixed by law, must be passed upon by the legislative assembly without first having been considered and acted upon by said board."

82-1105. (234) Records. The board must keep a record of all its proceedings, and any member may cause his dissent to the action of the majority upon any matter to be entered upon such record.

History: Sec. 228, Rev. C. 1907; re-en. Sec. 234, R. C. M. 1921; amd. Sec. 8, Ch. 97, L. 1961. See also history of Sec. 82-1101.

Amendment

The 1961 amendment deleted a second sentence which read "and all claims must be entered upon the minutes of the board before the same are acted upon."

82-1109. (238) Repealed.

Repeal

This section (Sec. 1, Ch. 138, L. 1953; Sec. 1, Ch. 110, L. 1955; Sec. 1, Ch. 21, L. 1957), relating to claims for which appropriations have been made, was repealed by Sec. 32, Ch. 97, Laws 1961.

Compiler's Note

Section 1 of Ch. 127, Laws 1961, purported to amend this section. However, since the section had been repealed by Sec. 32, Ch. 97, Laws 1961, the attempted amendment was nugatory under the provisions of section 43-515.

82-1110 to 82-1112. (239 to 241) Repealed.

Repeal

These sections (Secs. 233 to 235, Rev. C. 1907), relating to approval, disap-

proval, and transmittal of claims, were repealed by Sec. 32, Ch. 97, Laws 1961.

82-1120. (249) Repealed.

Repeal

This section (Sec. 243, Rev. C. 1907), relating to claims not approved by the

board of examiners, was repealed by Sec. 32, Ch. 97, Laws 1961.

82-1122 to 82-1124. (251 to 253) Repealed.

Repeal

These sections (Secs. 19 to 21, p. 187, L. 1891), relating to the examination of

the books of the state auditor and state treasurer, were repealed by Sec. 14, Ch. 80, Laws 1961.

82-1125. (254) Repealed.

Repeal

This section (Sec. 702, Pol. C. 1895; Sec. 248, Rev. C. 1907; Sec. 254, R. C. M. 1921;

Sec. 10, Ch. 80, L. 1961), establishing a furnishing board, was repealed by Sec. 33, Ch. 271, Laws 1963.

82-1126 to 82-1130. (255 to 259) Repealed.

Repeal

These sections (Secs. 703 to 707, Pol. C. 1895), relating to the board of sup-

plies and furnishing board, were repealed by Sec. 14, Ch. 80, Laws 1961.

82-1131. (259.1) Advertising for bids—when required—contracts—requirements—advertising—prohibiting subterfuge to avoid intent of this act. In all cases, it shall be unlawful for the board of examiners or any offices, departments, institutions, or any agent of the state of Montana acting for or in behalf of said state to do, to cause to be done, or to let any contract for the construction of buildings or the alteration and improvement of buildings and adjacent grounds on behalf of and for the

benefit of the state where the amount involved is one thousand dollars (\$1,000.00) or more without first advertising in at least one (1) issue each week for three (3) consecutive weeks in two (2) newspapers published in the state, one (1) of which must be published at the seat of government, and the other in the county where the work is to be performed calling for sealed bids to perform such work and stating the time and place, when and where such bids will be considered. All such jobs of work shall be done, caused to be done, or contracted for only after competitive bidding. In any case, if no bid for such job of work shall be accepted such work shall not be done or accomplished, and the same shall be readvertised, from time to time, until the same shall be awarded to a qualified competitive bidder therefor.

History: En. Sec. 1, Ch. 149, L. 1927; amd. Sec. 1, Ch. 142, L. 1961.

Amendment

The 1961 amendment inserted "In all cases" at the beginning of the section; in the first sentence, inserted "to do, to

cause to be done, or" before "to let any contract", deleted the word "repair" which appeared after "alteration", inserted "adjacent" before "grounds", and increased the amount specified from \$500 to \$1,000; and added the second and third sentences.

DECISIONS UNDER FORMER LAW

Scope of Section

This statute deals with the procedure to be followed when and if a contract is to be awarded. It does not set forth the instances when a contract must be let, nor does it prohibit state officers and

employees from performing work on state buildings. *Montana Chapter National Electrical Contractors Assn. v. State Board of Education*, 137 M 382, 352 P 2d 258, 259.

82-1131.1. Repeal clause. Any act or part of any act in conflict herewith, in whole or in part, is hereby repealed to the extent of such conflict. The provisions of this act [82-1131, 82-1131.1] shall not repeal to any extent the provisions of section 80-731, Revised Codes of Montana, 1947, and, further, this act shall not apply to work done by inmates at the Montana industrial school at Miles City, Montana, or the Montana state training school at Boulder, Montana, or the Montana children's center at Twin Bridges, Montana.

History: En. Sec. 2, Ch. 142, L. 1961.

Title of Act

An act amending section 82-1131, Revised Codes of Montana, 1947, relating to bidding requirements for construction, alteration and improvement of buildings and grounds on behalf of the state of Montana; raising minimum per job figure from five hundred dollars (\$500.00) to one thousand dollars (\$1,000.00), and requiring all jobs over said figure to be done only after competitive bidding, excepting from the effect of this act the provisions of section 80-731, Revised

Codes of Montana, 1947, and further excepting inmates at the Montana industrial school at Miles City, Montana, the Montana state training school at Boulder, Montana, and the Montana children's center at Twin Bridges, Montana; repealing all acts and parts of acts in conflict herewith; providing effective date.

Effective Date

Section 3 of Ch. 142, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 3, 1961.

82-1132. (259.2) Repealed.

Repeal

This section (Sec. 2, Ch. 149, L. 1927), relating to contents of the advertisement

required by section 82-1131, was repealed by Sec. 33, Ch. 271, Laws 1963.

82-1134. (259.4) Repealed.**Repeal**

This section (Sec. 4, Ch. 149, L. 1927),

invalidating cost plus contracts, was repealed by Sec. 33, Ch. 271, Laws 1963.

82-1137. (260) State printing—union label—requirements of responsibility—state preferences. All printing for which the state of Montana is chargeable, including reports of state officers, state boards, pamphlets, blanks, letter heads, envelopes, and printed matter of every kind and description, save and except certificates of appointment and election to office, must be printed within the state of Montana by a responsible bidder, if his bid is not more than 2% higher than the bid of the lowest bidder who is a nonresident of this state; unless local facilities for production of a particular sort of printed matter are not available, and shall bear the label of the branch of the international typographical union, the allied printing trades council or the amalgamated lithographers of America of the locality in which they are printed, except under the following conditions:

1. Printing firms not having the use of the said labels and who are desirous of presenting bids for printing as enumerated above shall be required to establish consideration as a responsible bidder as follows:

(a) As a condition to consideration as a responsible bidder printing concerns must file with the secretary of state a sworn statement to the effect that employees in the employ of the concern which is to produce such printing are receiving the prevailing wage rate and are working under conditions prevalent in the locality in which the work is produced.

(b) Whenever a collective bargaining agreement is in effect between an employer and employees who are represented by a responsible organization which is in no way influenced or controlled by the management, such agreement and its provisions shall be construed as conditions prevalent in said locality and shall be the minimum requirement for being adjudged a responsible bidder under this act.

(c) Printing firms having the use of the union labels as set forth above shall be deemed as having complied with the provisions of this act, but nothing in these provisions shall be construed as exempting such bidders from any provisions of the act, and such bidders shall also be required to conform to all of its provisions.

History: En. Sec. 1, p. 58, L. 1897; re-en. Sec. 254, Rev. C. 1907; re-en. Sec. 260, R. C. M. 1921; amd. Sec. 1, Ch. 242, L. 1963.

the section following "certificates of appointment and election to office" for "shall have the label of the branch of the international typographical union of the city in which they are printed."

Amendment

The 1963 amendment substituted all of

82-1138. (261) Penalty. Any officer of the state who shall accept any printed matter, save and except certificates named in the preceding section, for which the state is chargeable, in whole or in part, or who is found to have had printed matter produced, under conditions other than as set forth in this act, shall be subject to a fine of fifty dollars for each and every offense.

History: En. Sec. 1, p. 58, L. 1897; 261, R. C. M. 1921; amd. Sec. 2, Ch. 242, re-en. Sec. 255, Rev. C. 1907; re-en. Sec. L. 1963.

Amendment

The 1963 amendment substituted "in whole or in part, or who is found to have had printed matter produced, under conditions other than as set forth in this act" for "which does not bear a label indicating that it was printed in an office under the jurisdiction of the international typographical union."

Effective Date

Section 3 of Ch. 242, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 9, 1963.

82-1140 to 82-1143. (263 to 266) Repealed.**Repeal**

These sections (Secs. 709 to 712, Pol. C. 1895), relating to the board of exam-

iners' duties as ex officio board of supplies, were repealed by Sec. 14, Ch. 80, Laws 1961.

82-1145. (268) Repealed.**Repeal**

This section (Sec. 714, Pol. C. 1895), relating to the employment of clerical

help by state boards, was repealed by Sec. 14, Ch. 80, Laws 1961.

82-1146. (269) Repealed.**Repeal**

This section (Sec. 1, Ch. 26, L. 1907), relating to contracts for liability or in-

debtedness in excess of appropriations, was repealed by Sec. 14, Ch. 80, Laws 1961.

82-1148. (274) Repealed.**Repeal**

This section (Sec. 2, Ch. 108, L. 1921; Sec. 2, Ch. 176, L. 1931), relating to the

compensation of assistants in executive state offices, was repealed by Sec. 14, Ch. 80, Laws 1961.

82-1152. (279) Affidavit of printer—allowance of claims. No claim against the state for legal advertising or any of the publications covered by this act shall be allowed unless there is attached to said claim the certification of the publisher or printer (in the case of corporations or quasi-corporations by the business or advertising manager thereof) properly executed, setting forth that the price or rate charged the state of Montana for the publication for which claim is made, is not in excess of the minimum rate charged any other advertiser for publication or advertisement set in the same sized type and published for the same number of insertions. And it is hereby declared to be unlawful to make any claim against or to charge or attempt to charge, the state of Montana for any publication in excess of the minimum going rate charged any other advertiser for the same publication, set in the same sized type and published for the same number of insertions.

History: En. Sec. 4, Ch. 157, L. 1921; re-en. Sec. 279, R. C. M. 1921; amd. Sec. 9, Ch. 97, L. 1961.

Amendment

The 1961 amendment substituted the portion of the first sentence preceding the parentheses for "The state board of examiners shall not allow or approve for payment any claim against the state of

Montana by any publisher or printer, natural, corporate or quasi-corporate, nor shall the state auditor draw his warrant for the payment of any such claim against the state of Montana, for legal advertising or any of the publications covered by this act, in the event there is not attached to said claim the affidavit of the publisher or printer."

CHAPTER 12—FIRE MARSHAL, STATE

Section 82-1231. Tax on fire insurance premiums for maintenance of state fire marshal's office.

82-1205, 82-1206. (2739, 2740) Repealed.

Repeal

These sections (Sec. 3, Ch. 148, L. 1911; Sec. 1, Ch. 122, L. 1919; Sec. 1, Ch. 126, L. 1919; Sec. 1, Ch. 131, L. 1919), relating

to salaries of the fire marshal and his assistant, were repealed by Sec. 1, Ch. 129, Laws 1963.

82-1219. (2753) Removal of dilapidated buildings—proceedings.

Cross-Reference

Application of Montana Rules of Civil

Procedure to abatement proceedings, see Table A, M. R. Civ. P. (sec. 93-2711-7).

82-1231. (2761) Tax on fire insurance premiums for maintenance of state fire marshal's office. Each insurer authorized to effect insurance on risks enumerated in subsection two of section 11-1919, doing business in this state shall pay to the state auditor and commissioner of insurance ex-officio, during the month of February or March in each year, in addition to the taxes on premiums required by law to be paid by it, a tax of one-fourth of one per cent ($\frac{1}{4}$ of 1%) on the fire portion of the direct premiums on such risks received during the calendar year next preceding, after deducting cancellations and return premiums.

History: En. Sec. 24, Ch. 148, L. 1911; re-en. Sec. 2761, R. C. M. 1921; amd. Sec. 1, Ch. 83, L. 1941; amd. Sec. 1, Ch. 162, L. 1947; amd. Sec. 1, Ch. 182, L. 1959.

40-1302" where they followed "required by law to be paid by it."

Repealing Clause

Section 2 of Ch. 182, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment substituted "insurer" for "insurance company" at the beginning of the section; substituted "subsection two of section 11-1919" for "paragraph one of section 40-1409"; substituted "taxes on premiums" for "license fees" and deleted the words "provided in section

Effective Date

Section 3 of Ch. 182, Laws 1959 read "This act shall be in full force and effect from and after January 1, 1960."

CHAPTER 13—GOVERNOR—POWERS—RECORDS—SECRETARY

Section 82-1309. Enemy attack upon United States and governor and those in line for succession unable to act—calling of emergency session of state senate—election of president pro tempore to assume governorship.

82-1310. Emergency temporary seat of government—designation.

82-1309. Enemy attack upon United States and governor and those in line for succession unable to act—calling of emergency session of state senate—election of president pro tempore to assume governorship. If, because of an enemy attack upon the United States, the governor, lieutenant governor, president pro tempore of the senate and speaker of the house are killed or rendered unable to serve as governor, the chairman of the board of county commissioners of the state's most populous county, as determined by the last preceding official United States census shall have the power and it shall be his duty forthwith to call an emergency session of the state senate at any safe location within the state for the purpose of electing a president pro tempore who shall then assume the office of governor. Should such chairman of the board of county com-

missioners of the most populous county be dead or unable to act, the chairman of the board of the next most populous county shall exercise the power granted by this section.

History: En. Sec. 1, Ch. 148, L. 1959.

Title of Act

An act to provide for emergency succession to the office of governor in the

event of enemy attack upon the United States and to provide for selection of an emergency seat of government in case of such attack; providing for a repealing clause and an effective date.

82-1310. Emergency temporary seat of government—designation. If, because of an enemy attack upon the United States, the city of Helena should be rendered unsafe, the governor may designate any safe location within the state as an emergency temporary seat of government until such time as the city of Helena is again safe for occupancy.

History: En. Sec. 2, Ch. 148, L. 1959.

Effective Date

Repealing Clause

Section 3 of Ch. 148, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Section 4 of Ch. 148, Laws 1959 provided the act should be in effect immediately after its passage and approval. Approved March 7, 1959.

CHAPTER 15—HAIL INSURANCE, STATE BOARD OF

Section 82-1505. Reinsurance.

82-1507. Scope and object of levy—reserve.

82-1511. State treasurer's duty—transfer of funds—warrants—transfers to county and state general fund.

82-1516. Appointment of appraisers in case of dissatisfaction with official adjustment.

82-1517. Payment of losses.

82-1519. Compensation of chairman and officers—financial report.

82-1505. Reinsurance. Because of the unusual or unexpected variation in the severity of damage to grain crops which occur from year to year and in order to enable the state hail insurance board to spread the effect of these variations more evenly over all years, the state board is hereby authorized to negotiate for and to secure reinsurance of a part of the risk in any year when the need of such reinsurance appears advisable to the board. The state board is hereby authorized to use moneys from hail insurance levies for the purchase of such reinsurance whenever it appears to the board that such reinsurance is necessary and advisable.

History: En. Sec. 3, Ch. 37, L. 1943; amd. Sec. 74, Ch. 147, L. 1963.

Amendment

The 1963 amendment, in the first sen-

tence, substituted "state hail insurance board" for "state hail insurance fund" and, in the second sentence, substituted "hail insurance levies" for "hail insurance fund."

82-1507. (352) Scope and object of levy—reserve. (1) In making the levy provided in the preceding section the state board of hail insurance shall provide for:

1. The payment of all expenses of administration, together with all interest owed or to be owing on registered warrants.

2. For that portion of the losses incurred during the current year which are not paid from funds drawn from the reserve.

3. For the maintenance of the reserve, a part or all of which may be used in any one year for the purpose of paying the costs of administra-

tion, interest on the warrants and losses as the same shall be settled and adjusted by the said board including the losses sustained in any prior year or years under the state hail insurance law during or subsequent to the year 1919 that have not been paid.

4. If at the end of any hail insurance season the state board of hail insurance determines and finds that more funds are accumulating from the current year's levies than were estimated when the levy was made, and which funds are in excess of the need for the payment of losses and expenses and maintenance of the reserve, the state board of hail insurance may, at its discretion, refund to the farmers insured for the said year, on a pro rata or percentage basis the excess.

(2) Each year when the hail board makes its annual levy for the payment of current losses, expenses of administration, and for an addition to the reserve if conditions permit, it shall not increase the levy enough in any year so that such addition to the reserve will exceed five per cent (5%) of the maximum risk written for that year and provided further, that the reserve shall not exceed the amount of one million two hundred thousand dollars (\$1,200,000.00).

(3) The reserve hereby created shall be deposited in the agency fund and the state board of hail insurance is hereby granted the power to draw from its moneys in said fund such amounts as it may deem necessary for the purpose of paying costs of administration, interest and losses, and provided further, that whenever there are no unpaid losses for prior years and whenever in any one (1) year the cost of administration, interest and losses for the current year shall be less than the sum of sixty cents (60¢) per acre on nonirrigated grains and a proportionate amount on irrigated grains and other crops, the state board of hail insurance shall not draw on the reserve for any purpose unless the amount required for the payment of losses for the current year, including interest on warrants and costs of administration shall exceed the amount of the estimate made by the state board of hail insurance.

History: En. Sec. 2, Ch. 34, L. 1919; re-en. Sec. 352, R. C. M. 1921; amd. Sec. 5, Ch. 40, L. 1923; amd. Sec. 1, Ch. 8, L. 1929; amd. Sec. 3, Ch. 200, L. 1953; amd. Sec. 1, Ch. 20, L. 1957; amd. Sec. 73, Ch. 147, L. 1963.

Amendments

The 1957 amendment added paragraph 4 to subsection (1).

The 1963 amendment substituted "reserve" for "reserve fund" at the end of paragraph 2 of subsection (1), near the beginning of paragraph 3 of subsection (1), in paragraph 4 of subsection (1), two places in subsection (2), and in the latter part of subsection (3); deleted from paragraph 4 of subsection (1) second and

third sentences reading, "A list containing the names, addresses, and other information that the said board determines necessary shall be presented for the approval of the state board of examiners of the state of Montana. The state auditor of the state of Montana is hereby authorized to draw and issue warrants for the payment of the same"; substituted "deposited in the agency fund" for "a continuous fund" near the beginning of subsection (3); and inserted "its moneys in" before "said fund" in subsection (3).

Repealing Clause

Section 2 of Ch. 20, Laws 1957 repealed all acts and parts of acts in conflict therewith.

82-1511. (355) State treasurer's duty—transfer of funds—warrants—transfers to county and state general fund. The state treasurer shall receive all moneys paid to him under this act and shall place same to the credit of the agency fund and may from time to time transfer to the

earmarked revenue fund such sums as the state board may deem necessary and proper to pay the expenses of administration. All moneys collected by the board shall be deposited in the agency fund and all losses shall be paid from that fund. All other costs are administrative expenses and shall be paid from the board's account in the earmarked revenue fund. If registered warrants be presented and there be no money to pay the same, such warrants shall be registered and thereafter bear interest at the rate of four per cent (4%) per annum until called for payment by the state treasurer. If at any time more funds are in the earmarked revenue fund than the board estimates are needed for administrative expense, the state treasurer may on the order of the state board of hail insurance transfer such funds back to the agency fund as the state board may direct.

Upon warrants drawn by order of the state board of hail insurance the state treasurer shall pay out of the board's account in the agency fund to the county treasurer of each county where state hail insurance coverage is in force one per cent (1%) of the gross annual levies made and collected in such county under the hail insurance act for the use of the county as the board of county commissioners may determine.

Upon authorization from the state board of hail insurance the state treasurer shall transfer out of the board's account in the agency fund to the general fund of the state of Montana two per cent (2%) of the gross annual levies made and collected in the state of Montana.

History: En. Sec. 4, Ch. 169, L. 1917; amd. Sec. 1, Ch. 183, L. 1921; re-en. Sec. 355, R. C. M. 1921; amd. Sec. 8, Ch. 40, L. 1923; amd. Sec. 1, Ch. 189, L. 1961; amd. Sec. 75, Ch. 147, L. 1963.

Amendments

The 1961 amendment added the second and third paragraphs.

The 1963 amendment substituted "the agency fund" for "a fund to be known as the state hail insurance fund" or "the hail insurance fund" in the first sentence of the first paragraph and near the end of the first paragraph; substituted "the earmarked revenue fund" for "the hail insurance administrative fund" or "the administrative fund" in the first and last sentences of the first paragraph; deleted from the end of the first sentence of the first paragraph the words "together with such sums as may be needed to pay all the warrants registered against the hail insurance administrative fund, plus the accrued interest thereon, and shall pay out of such

funds on warrants drawn by the state auditor by order of the state board of hail insurance"; inserted the second and third sentences in the first paragraph; substituted "registered warrants" for "such warrants" near the beginning of the present fourth sentence of the first paragraph; deleted "in the said funds" after "no money" in the present fourth sentence of the first paragraph; deleted from the first paragraph a former next to last sentence reading, "All interest and earnings obtained by the state treasurer for such moneys shall be credited to the respective funds"; substituted "administrative expense" in the last sentence of the first paragraph for "the purposes mentioned above"; deleted "by the state auditor" after "warrants drawn" near the beginning of the second paragraph; and substituted "the board's account in the agency fund" for "the hail insurance fund" or "the state hail insurance fund" in the second and third paragraphs.

82-1516. (360) Appointment of appraisers in case of dissatisfaction with official adjustment. (1) In case the party that has sustained the loss is dissatisfied with and refuses to accept the adjustment made by the official appraiser then he shall have the right to appeal to the state board of hail insurance, provided however, he shall make such appeal by registered mail within ten (10) days after receiving the adjustment offer of the state board in writing. Also it is further provided that the state board of hail insurance may require the posting of a cash bond of ten dollars

(\$10.00) with the request for re-appraisal of the first adjustment. In cases where the board requires the posting of the ten dollar (\$10.00) bond, the board may retain it if no increase is allowed. If an increase is obtained, the board will return the bond to the claimant. In case the adjuster who makes the second appraisal fails to secure an agreement the claimant may at his option submit the matter to arbitration as herein provided or sue the state board of hail insurance in the district court of the county where the loss occurred. Such actions shall be trials de novo and the Montana Rules of Civil Procedure shall apply. If the claimant elects to submit the matter to arbitration he shall then appoint one disinterested person as appraiser, and the official appraiser shall appoint another person as appraiser, and the two shall select a third disinterested person and the three shall then proceed to adjust the loss in the same manner as specified in section 82-1515 and the judgment of the majority shall be the judgment of said appraisers and shall be binding upon both parties as the final determination of said loss; provided, however, that if the insured does not recover a greater sum than allowed by the official appraiser in the first instance, he shall pay the expenses of the said three appraisers and their witnesses in making said adjustment, but if he is awarded a larger sum then the same shall be paid by the state board of hail insurance.

(2) If the insured shall be required to pay the expenses of such re-appraisement as above provided, the state board of hail insurance is hereby authorized to deduct the amount of such expenses from the amount allowed said insured before making settlement for said loss.

Provided, also, that where any claimant demands arbitration he shall, if required by the board, furnish a cash bond to the state board of hail insurance in the sum of twenty-five dollars (\$25.00) which shall accompany his application. If there is not sufficient allowance made to any claimant after arbitration to cover the cost of arbitration without the use of the twenty-five dollars (\$25.00) bond, then the state board may use a part or all of said cash bond. In cases where the claimant secures an increase the bond shall be promptly returned to the claimant.

(3) The state board of hail insurance shall examine all reports of appraisers and verify the same, and adjust all losses, and for such purposes may order hearings, subpoena witnesses and conduct examinations and do all things necessary to secure a fair and impartial appraisement of losses by hail.

History: En. Sec. 9, Ch. 169, L. 1917; amd. Sec. 6, Ch. 34, L. 1919; re-en. Sec. 360, R. C. M. 1921; amd. Sec. 10, Ch. 40, L. 1923; amd. Sec. 4, Ch. 33, L. 1949; amd. Sec. 1, Ch. 69, L. 1963; amd. Sec. 76, Ch. 147, L. 1963.

a composite section incorporating the changes made by both.

Amendments

Chapter 69, Laws 1963, substituted "ten (10) days after receiving the adjustment offer of the state board in writing" for "four (4) days after such disagreement" at the end of the first sentence of subsection (1); and provided for actions against the board of hail insurance by dividing the former fifth sentence of subsection (1) into two sentences and by inserting at that point the words "may at his option

Compiler's Note

This section was amended twice in 1963, once by Ch. 69 and once by Ch. 147. Neither amendatory act mentioned nor included the changes made by the other. Since the amendments do not appear to conflict, however, the compiler has made

submit the matter to arbitration as herein provided or sue the state board of hail insurance in the district court of the county where the loss occurred. Such actions shall be trials de novo and the Montana Rules of Civil Procedure shall apply. If the claimant elects to submit the matter to arbitration he."

Chapter 147, Laws 1963, deleted "for the hail insurance fund" after "may retain it" in the third sentence of subsection (1); deleted "out of the hail insurance fund" at the end of subsection (1); and deleted from subsection (2) a former next to last sentence reading, "Any forfeits so collected shall be placed promptly in the state hail insurance administrative fund."

82-1517. (361) Payment of losses. (1) The state board of hail insurance shall, as soon as practicable after the loss has been sustained, arrange for the payment of the losses as follows: From the amount of the loss as adjusted for each claimant the state board of hail insurance shall deduct the amount the claimant then owes as delinquent hail insurance tax and the maximum amount assessed as hail insurance tax for the current year, and shall make settlement within forty (40) days from the time loss is sustained in the following manner: By paying, either by registered warrant or otherwise if funds are immediately available, fifty per cent of the total loss as agreed on, less, however, the maximum rate of assessment; balance to be paid at the expiration of the hail season.

(2) The state board of hail insurance shall, on or before November first, order payment for the amount so deducted, which payment shall be remitted to the county treasurer of the county in which the tax was assessed. The state board of hail insurance shall then order payment for the balance of the adjustment which payment shall be sent to the claimant; provided, however, that in no case shall the payment for loss exceed twelve dollars (\$12.00) per acre for grain crops on nonirrigated lands, and twenty-four dollars (\$24.00) per acre on irrigated lands, and not to exceed twelve dollars (\$12.00) per acre on hay crops; provided, further, that no claimant shall receive payment for any loss incurred where said loss does not equal or exceed five per cent (5%) of the total value of the crop insured. Also if the losses in any year should exceed the current levy plus the reserve, if any, then the payment of all losses shall be prorated share and share alike among all grain growers having loss claims adjusted and approved, and the unpaid balance of said losses shall be paid out of the reserve without interest in such order as the state board of hail insurance shall direct, when in the judgment of the said board there are sufficient moneys to provide for the payment of the same and other items payable out of said reserve. In any year the state board of hail insurance may by resolution authorize its chairman and secretary to borrow as needed from any person, bank or corporation such sum or sums of money as the state board may deem necessary to carry on the business of the department and for the purpose of paying all warrants as issued.

(3) For any moneys borrowed under the provisions of this act, the state board of hail insurance shall cause warrants to be drawn and said warrants shall bear interest at not to exceed six per cent (6%) per annum and said warrants and the interest thereon shall be paid out of funds from the state hail insurance department as they are collected from the various counties in the state. The state board of hail insurance shall not at any

time borrow a total sum greater than the amount of levies as made for taxes for the current year together with such delinquent taxes as remain unpaid on the books of the county treasurer.

History: En. Sec. 10, Ch. 169, L. 1917; amd. Sec. 7, Ch. 34, L. 1919; amd. Sec. 5, Ch. 141, L. 1921; re-en. Sec. 361, R. C. M. 1921; amd. Sec. 11, Ch. 40, L. 1923; amd. Sec. 2, Ch. 8, L. 1929; amd. Sec. 5, Ch. 33, L. 1949; amd. Sec. 4, Ch. 200, L. 1953; amd. Sec. 77, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "order payment" for "order the state auditor to draw a warrant on the state hail insurance fund" in each of the first two sentences of subsection (2); substituted "which payment" for "which warrant" in each of the

first two sentences of subsection (2); substituted "reserve" for "reserve fund" or "funds" in three places in the third sentence of subsection (2); deleted "in said fund" before "sufficient moneys to provide" in the latter part of the third sentence of subsection (2); deleted "against the state hail insurance fund" after "cause warrants to be drawn" in the first sentence of subsection (3); and deleted from subsection (3) a final sentence reading, "The state board of examiners is hereby empowered to invest surplus money belonging to any fund in the warrants of the hail insurance fund."

82-1519. (363) Compensation of chairman and officers—financial report. It shall be the duty of all public officers to perform the duties relative to hail insurance under this act, without other compensation than that allowed by law. The chairman of the state board of hail insurance shall receive a salary not in excess of five hundred fifty dollars (\$550.00) per month and all appointed officers and employees under this act shall be allowed the per diem and mileage allowed state employees. The compensation of all appointed officers and employees of the board shall be fixed by the state board of hail insurance.

The chairman of the state board of hail insurance shall each year submit a full financial report of the operations of the department to the governor of the state.

History: En. Sec. 12, Ch. 169, L. 1917; amd. Sec. 2, Ch. 183, L. 1921; re-en. Sec. 363, R. C. M. 1921; amd. Sec. 12, Ch. 40, L. 1923; amd. Sec. 1, Ch. 165, L. 1929; amd. Sec. 1, Ch. 53, L. 1951; amd. Sec. 1, Ch. 165, L. 1961.

Amendment

The 1961 amendment after the words "receive a salary" in the second sentence inserted the words "not in excess"; increased the monthly salary from \$300 to \$550; after the words "per month" deleted a phrase which read "while actually engaged in service and actual traveling expenses,"; after the words "appointed officers" in the second sentence inserted "and employees"; at the end of the second sentence, substituted "allowed the per diem and mileage allowed state em-

ployees" for "paid their actual traveling expenses and shall be allowed per diem as the state board of hail insurance may determine" for each day of eight hours while actually engaged in service under this act, out of the hail insurance administrative fund"; and added the third sentence to the first paragraph.

Repealing Clause

Section 2 of Ch. 165, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 165, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 6, 1961.

CHAPTER 16—LABORATORY COMMISSION

(Repealed—Section 33, Chapter 271, Laws of 1963)

82-1601 to 82-1606. Repealed.

Repeal

These sections (Secs. 1 to 6, Ch. 78, L. 1945), relating to the laboratory commis-

sion, were repealed by Sec. 33, Ch. 271, Laws 1963.

CHAPTER 17—LIEUTENANT GOVERNOR

82-1701. (130) Duties of lieutenant governor.

Casting Deciding Vote

The lieutenant governor of Montana, while presiding as president of the senate, possessed the requisite power to enable or entitle him to cast the deciding vote on the third reading of House Bill

No. 342, as amended [1961 amendment of section 31-135], at a time when the senators, then present and voting, were equally divided. *State ex rel. Easbey v. Highway Patrol Board*, — M —, 372 P 2d 930, 939.

CHAPTER 18—MARSHAL OF SUPREME COURT

82-1803. (368) Repealed.

Repeal

This section (Sec. 4, p. 210, L. 1891; Sec. 1, Ch. 62, L. 1913; Sec. 1, Ch. 52, L. 1919; Sec. 3, Ch. 38, L. 1939; Sec. 1, Ch.

128, L. 1949), relating to the salary and mileage allowances of the marshal, was repealed by Sec. 1, Ch. 129, Laws 1963.

CHAPTER 19—PURCHASING DEPARTMENT AND AGENT

Section 82-1902.	Duties of state purchasing agent.
82-1903.	Maintenance of warehouses.
82-1904.	Authority to purchase.
82-1904.1.	Native coal to be preferred for heating of public buildings.
82-1904.2.	Use of wood, gas, and oil not prohibited—coal from outside state.
82-1905.	Payment for purchases by state agent.
82-1906.	Contracts for printing and supplies.
82-1909.	Furnishing of stationery, etc., for departments of state.
82-1916.	Printing and publications.
82-1919.	Purchase of fresh fruits and vegetables—emergency purchases.
82-1924.	State contracts to be awarded to lowest responsible resident bidder.
82-1925.	Residence defined—domestic corporations.
82-1926.	Contract provision for preference to Montana products—failure to comply—federal aid projects.

82-1902. (285) Duties of state purchasing agent. The state purchasing agent shall, under the restrictions of this act, have full and sole power and authority and it shall be his duty to contract for and purchase or direct and supervise the purchase and sale of all supplies of whatever nature necessary for the proper transaction of the business of each and every state department, commission, board, institution, or official. For the purpose of making such purchases and contracts the state purchasing agent shall be and is hereby made the purchasing agent of and for each and every state department, commission, board, institution and official.

History: En. Sec. 2, Ch. 197, L. 1921; re-en. Sec. 285, R. C. M. 1921; amd. Sec. 1, Ch. 80, L. 1961.

Amendment

The 1961 amendment deleted the words "upon approval of the state board of examiners" where they appeared between the words "be his duty" and "to contract for" and deleted a proviso at the end of the section which read: "Provided, the state board of examiners may provide a

contingent fund for each state department, commission, board, institution, or official, in a sum to be fixed by the state board of examiners, to be used in the payment of urgent contingent expenses that may be necessary for the conduct of the business of such department, commission, board, institution, or official, such expenditures to be thereafter examined and approved by the state board of examiners."

82-1903. (286) Maintenance of warehouses. The state purchasing agent shall have the power and authority to maintain warehouses and

to rent or lease, or construct the same, and to issue such rules and regulations as may be necessary for the proper and economical conduct of the business of the state purchasing agent.

History: En. Sec. 3, Ch. 197, L. 1921; re-en. Sec. 286, R. C. M. 1921; amd. Sec. 2, Ch. 80, L. 1961.

Amendment

The 1961 amendment deleted the words "subject to the approval of the state

board of examiners" which appeared after the words "power and authority"; and, at the end of the section, deleted a proviso reading, "provided, such contract and such purchase shall have first met the approval of the state board of examiners before being made."

82-1904. (287) Authority to purchase. An estimate or requisition presented by the department, commission, board or state official in control of the appropriation or fund against which such contract or purchase is to be charged, must be approved by the state purchasing agent, and this shall be full authority for any contract and any purchase made by the state purchasing department.

History: En. Sec. 4, Ch. 197, L. 1921; re-en. Sec. 287, R. C. M. 1921; amd. Sec. 1, Ch. 17, L. 1925; amd. Sec. 1, Ch. 51, L. 1939; amd. Sec. 3, Ch. 80, L. 1961.

Amendment

The 1961 amendment deleted at the end of the section a proviso which read: "provided, however, that no purchase shall be

made by the state purchasing department of any furniture, fixtures, apparatus or equipment for any department, board, commission or office until the estimate or requisition for the purchase thereof has been submitted to the state board of examiners and an order made by such board authorizing the purchase thereof."

82-1904.1. Native coal to be preferred for heating of public buildings. The various state institutions, county buildings and public school houses in the state of Montana, which use coal for heating, shall use Montana native bituminous or lignite coal. No official shall purchase for use in such institutions, county buildings and public schools any coal other than that produced from the coal mining properties within the boundaries of this state.

History: En. Sec. 1, Ch. 150, L. 1961.

Title of Act

An act to provide that state institutions, county buildings and public school

buildings which use coal for heating shall use Montana native bituminous or lignite coal; providing exception in certain instances.

82-1904.2. Use of wood, gas, and oil not prohibited—coal from outside state. This act [82-1904.1, 82-1904.2] shall not be construed, however, as prohibiting the use of wood or its products, gas, oil, or oil products, for fuel, in any area of Montana, where such wood, or its products, gas, oil or oil products, are being used for fuel, in state institutions, county buildings and public school houses, and shall also not prohibit the conversion of a heating system using coal to a heating system using wood, or its products, gas, oil or its products, in the above mentioned institutions, county buildings and public school houses. It shall also not prohibit the use of coal from outside the state of Montana, if the comparative cost of such coal, is not greater than that of the native coal.

History: En. Sec. 2, Ch. 150, L. 1961.

82-1905. (288) Payment for purchases by state agent. All valid claims on account of such contract and purchases negotiated by the state

purchasing agent shall be audited and paid from the sums severally set aside for the use of the state purchasing department by the contract and purchase estimate or requisition.

History: En. Sec. 5, Ch. 197, L. 1921; re-en. Sec. 288, R. C. M. 1921; amd. Sec. 4, Ch. 80, L. 1961.

Amendment

The 1961 amendment deleted from the end of the section language which read "upon the sworn statement of the executive officer of the department, commission, board, or institution, or the state official in control of the appropriation or

fund, together with the sworn statements of the state purchasing department, and said sworn statements of said executive officer and state purchasing department, after approval by the state board of examiners shall be full and sufficient authority for the state auditor to draw his warrant and the treasurer to pay the same against any appropriation or fund in the treasury available for the purpose of any such contract and purchase."

82-1906. (289) Contracts for printing and supplies. The state purchasing agent shall have exclusive power to contract for all printing and to purchase, sell, or otherwise dispose of, or to authorize, regulate and control the purchase, sale or other disposition of, all materials and supplies, service, equipment, and other physical property of every kind, required by any state institution or by any department of the state government; and to purchase or cause to be purchased all needed commissary supplies, and all raw material and tools necessary for any manufacturing carried on at any of said institutions; and to sell all manufactured articles, and collect the money for the same, and generally to regulate and control all purchases by any department of the state government, or by any state institution; and also to furnish, repair, and maintain the executive residence for the governor. The state purchasing agent shall remit to the state treasurer all moneys received from the sale of property belonging to the state of Montana, said moneys to be by the treasurer credited to the general fund.

History: En. Sec. 6, Ch. 197, L. 1921; re-en. Sec. 289, R. C. M. 1921; amd. Sec. 5, Ch. 80, L. 1961.

Amendment

The 1961 amendment after the words "have exclusive power" deleted the words "subject to the consent and approval of the state board of examiners."

82-1909. (292) Furnishing of stationery, etc., for departments of state. All stationery, printing, paper, fuel and lights used in the legislative and other departments of government, and the printing, binding and distribution of the laws, journals and department reports and other printing and binding, and repairing and furnishing the halls and rooms used for the meeting of the legislative assembly and its committees, shall be procured by the state purchasing agent as hereinafter provided.

History: En. Sec. 9, Ch. 197, L. 1921; re-en. Sec. 292, R. C. M. 1921; amd. Sec. 1, Ch. 69, L. 1949; amd. Sec. 6, Ch. 80, L. 1961.

Amendment

The 1961 amendment at the end of the section, deleted the words "with the approval of the state board of examiners."

82-1916. (293.6) Printing and publications. The state purchasing agent shall have exclusive power, subject to the consent and approval of the governor, to contract for all printing for any purpose used by the state of Montana in any state office, elective or appointive or by any state board, commission, bureau, state institution or department except

the printing of the decisions of the supreme court as provided in section 82-2004, Revised Codes of Montana, 1947, and shall supervise and attend to all public printing of the state of Montana in the manner in this act provided, and shall prevent duplication and unnecessary printing; all forms, blanks and documents printed for distribution to the departments of the state government or state institutions shall be serially numbered and indexed by the state purchasing agent and sample copies of each thereof permanently retained in his office; and the state purchasing agent shall from time to time furnish to the public general information as to the nature, description and official numbers of such reports as are available for public distribution.

Unless otherwise provided by law, the state purchasing agent in letting contracts as provided in this act, for the printing, binding and publishing of all laws, journals and reports of the various offices, departments, boards, commissions and institutions of the state, shall have the power to determine the quantity, quality, style and grade of all such printing, binding and publishing.

Provided, that all reports of any department or institution of the executive branch for any fiscal year required by law to be published, must be submitted to the governor before November 1st, of each year, for approval, correction or modification, and when by the governor approved, as corrected or modified, must by him be certified to the state purchasing agent for publication, provided, the governor may require all such reports or any number of them, to be published in one volume, such publication to be completed on or before the tenth day of January thereafter. Such reports shall be confined to a factual presentation to the governor and legislature of the activities of the department concerned and any recommendations of the department head and shall be $8\frac{1}{2} \times 11$ inches in outside dimension and shall employ single color covers only.

And provided further, any such reports so published, in one volume may also be separately published in pamphlet form, in such number as may be directed by the governor.

The reports shall be distributed by the department responsible for making the report. Such distribution shall be within the discretion of the head of the department making the report, but the following distribution shall be mandatory:

To the governor—as many as he desires, but not less than two (2) copies of each report.

To the secretary of state—two (2) copies of each report.

To the legislative council—two (2) copies of each report.

To the librarian of the state historical library—forty (40) copies of printed reports and a minimum of four (4) copies of mimeographed or carbon reports.

The historical society of Montana shall distribute publications so received to the public libraries, and other educational, scientific, library or art institutions of the state, which may apply to be put on the mailing list for all or a portion of the state publications; and to such libraries and other institutions outside this state with which the historical society of Montana may have established exchange relations.

The historical society of Montana shall transmit to the United States Library of Congress, two (2) copies of every administrative report or study.

To the legislative assembly of the state of Montana—one (1) copy for each member.

History: En. Sec. 6, Ch. 66, L. 1923; amd. Sec. 7, Ch. 80, L. 1961.

Amendment

The 1961 amendment inserted the words "except the printing of the decisions of the supreme court as provided in section 82-2004 Revised Codes of Montana, 1947" in the first paragraph; divided the former second paragraph into the

second and third paragraphs; inserted the words "of any department or institution of the executive branch" near the beginning of the present third paragraph; added the last sentence to the present third paragraph; and added at the end of the section the paragraphs pertaining to the distribution of reports, beginning with the words "The reports shall be distributed."

82-1919. (293.9) Purchase of fresh fruits and vegetables—emergency purchases. Fresh fruits and vegetables (other than potatoes) shall not be included in the supplies to be purchased as hereinbefore provided. The state purchasing agent may allow any state officer, board, commission or superintendent of state institution to purchase the fresh fruits and vegetables therefor, and make other and minor purchases for the same; an itemized account to be kept of all such purchases and furnished to the state purchasing department.

Likewise, when immediate delivery of articles or performance of service is required by the public exigencies, the articles or service so required may be procured by open purchase or contract at the place and in the manner in which such articles are usually bought and sold or such services engaged between individuals, but under the direction of the state purchasing agent.

History: En. Sec. 9, Ch. 66, L. 1923; amd. Sec. 8, Ch. 80, L. 1961.

Amendment

The 1961 amendment, in the second sentence of the first paragraph, after the words "agent may allow" deleted the

words "under proper rules, regulations and instructions approved by the state board of examiners"; and at the end of the section deleted the words "and subject to the approval of the state board of examiners."

82-1924. State contracts to be awarded to lowest responsible resident bidder. In order to provide for an orderly administration of the business of the state of Montana in awarding contracts for materials, supplies, equipment, construction, repair and public works of all kinds, it shall be the duty of each board, commission, officer or individual charged by law with the responsibility for the execution of the contract on behalf of the state, board, commission, political subdivision, agency, school district or public corporation of the state of Montana, to award such contract to the lowest responsible bidder who is a resident of the state of Montana and whose bid is not more than two per cent (2%) higher than that of the lowest responsible bidder who is a nonresident of this state. This requirement shall prevail whether the law required advertisement for bids or does not require advertisement for bids.

History: En. Sec. 1, Ch. 183, L. 1961.

Title of Act

An act to create regulations for the

awarding of contracts by the state of Montana, agencies thereof, political subdivisions thereof, school districts and other public corporations; providing for

preference for Montana residents and for products manufactured and produced in this state; defining the word "resident"; providing penalties and repealing all acts

and parts of acts in conflict herewith; containing a severability clause and an effective date.

82-1925. Residence defined—domestic corporations. For the purpose of this act the word "resident" shall include actual residence of an individual within this state for a period of more than one (1) year immediately prior to bidding; in a partnership enterprise or an association, the majority of all partners or association members shall have been actual residents of the state of Montana for more than one (1) year immediately prior to bidding; domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents but this qualification may be set aside and a successful bid disallowed where it is shown to the satisfaction of the board, commission, officer or individual charged with the responsibility for the execution of such contract that said corporation is (a) composed of resident organizers or directors of this state who have no substantial interest or investment in the corporation for which they are acting and that the ownership and control of said company is vested in nonresidents; (b) that the Montana corporation is a wholly-owned subsidiary of a foreign corporation; (c) that said corporation was formed for the purpose of circumventing the provisions of this act relating to residence.

History: En. Sec. 2, Ch. 183, L. 1961.

82-1926. Contract provision for preference to Montana products—failure to comply—federal aid projects. Each contract awarded by any political subdivision, school district, public corporation or agency of the state of Montana shall contain among its provisions a requirement that in all instances products manufactured or produced in this state by Montana industry and labor shall be preferred for use in all projects and in all materials, supplies and equipment, if such products, materials, equipment and supplies are comparable in price and quality. Further, in this connection, it is the intent of this act that wherever possible products manufactured and produced in this state which are suitable substitutes for products manufactured or produced outside the state and comparable in price, quality and performance, shall be preferred for use in all projects and in all state institutions.

Failure to comply with the law in this respect shall disqualify such contractor as a qualified bidder for future contracts with the state of Montana, any legal subdivision of the state of Montana, any school district, public corporation or agency for a period of two (2) years.

No preference shall be given on contracts where federal aid is obtained from any bureau or department of the United States except as provided for by the laws of the United States, nor shall the provisions of section 82-1157, Revised Codes of Montana, 1947, be amended or repealed by this act.

History: En. Sec. 3, Ch. 183, L. 1961.

Separability Clause

Section 4 of Ch. 183, Laws 1961 read "If any section, subsection, sentence,

phrase or clause of this act is for any reason held to be unconstitutional or invalid, such declaration shall not affect the validity of the remaining portions of this act."

Repealing Clause

Section 5 of Ch. 183, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 6 of Ch. 183, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 6, 1961.

CHAPTER 20—REPORTERS OF DECISIONS OF SUPREME COURT— PUBLICATION AND DISTRIBUTION OF REPORTS

Section 82-2002. Duties of reporters.

82-2004. Contract with publisher.

82-2002. (379) Duties of reporters. The reporters of the decisions of the supreme court shall make careful and accurate reports of the cases decided by the supreme court. The reports of such cases shall be made under the supervision of, and pursuant to rules and regulations promulgated by the justices of the supreme court.

History: En. Sec. 891, Pol. C. 1895; re-en. Sec. 307, Rev. C. 1907; re-en. Sec. 379, R. C. M. 1921; amd. Sec. 1, Ch. 174, L. 1947; amd. Sec. 1, Ch. 14, L. 1961.

Amendment

The 1961 amendment substituted the second sentence for sentences reading: "The reports of such cases shall contain syllabi of the points decided; a statement

of the facts taken from the record, when the same are not fully given in the opinion of the court; the names of counsel; and a reference to such authorities as are cited in the briefs of counsel and have special bearing on the case. It shall be the further duty of said reporters to prepare a full and comprehensive index and tables of cases reported to each volume of said reports."

82-2004. (381) Contract with publisher. The justices shall have no pecuniary interest in the volumes of reports. The reports must be published by contract to be entered into by the justices and with the publishing house that will agree to publish the new volumes of the Montana reports for any term of years agreeable to the justices, provided that such term shall not exceed six (6) years, nor be for less than one (1) year, and furnish to the state and the people of the state at prices fixed in the contract any volume or volumes printed by such publishers. In the contract the justices may, at their discretion, require the publisher to agree to furnish complete sets or odd volumes of the Montana reports from and including volume one to the last volume published, to the state and the people of the state at prices fixed in the contract. Such contract shall require the publisher to print each volume in accordance with the specifications set forth in the preceding section. It shall also require the publisher to issue each new volume within ninety (90) days after the manuscript for the same is delivered by the justices to the said publisher. Such contract shall also require the publisher to make stereotype matrices of each volume so published by him, and to preserve these matrices in fire proof vaults, to the end that the volumes will never become out of print. The publisher receiving the contract as herein provided shall, before commencing the publication of the volumes of such reports, advertise in two (2) newspapers in Montana for ten (10) days for proposals for such printing, stereotyping, and binding of such volumes, and such publisher shall, if the proposals for such work do not exceed by the sum of twenty per cent (20%), the amount for which the same

can be done outside of the state, cause such printing, stereotyping and binding to be done within the state of Montana.

History: En. Sec. 893, Pol. C. 1895; re-en. Sec. 309, Rev. C. 1907; re-en. Sec. 381, R. C. M. 1921; amd. Sec. 2, Ch. 1, L. 1925; amd. Sec. 1, Ch. 111, L. 1943; amd. Sec. 2, Ch. 14, L. 1961.

Amendment

The 1961 amendment in the second

sentence, substituted the words "for any term of years agreeable to the justices, provided that such term shall not exceed six (6) years, nor be for less than one (1) year," for the words "for a period of six (6) years."

CHAPTER 21—INTERGOVERNMENTAL COOPERATION

Section 82-2112. Legislative council—function—commission on interstate cooperation—delegations and committees.

82-2113. Council of state governments declared joint governmental agency.

82-2101 to 82-2111. Repealed.

Repeal

These sections (Secs. 1 to 11, Ch. 86, L. 1937), relating to committees on inter-

governmental cooperation, were repealed by Sec. 1, Ch. 72, Laws 1959.

82-2112. Legislative council—function—commission on interstate cooperation—delegations and committees. It shall be a function of the legislative council to:

(1) Carry forward the participation of the state of Montana as a member of the council of state governments, and the legislative council is hereby designated as the Montana commission on interstate cooperation;

(2) Encourage and assist the government of this state to develop and maintain friendly contact by correspondence, by conference, and otherwise, with the other states, with the federal government, and with local units of government;

(3) Establish such delegations and committees as may be deemed advisable to confer with similar delegations and committees from other states concerning problems of mutual interest. The membership of such delegations and committees may consist of legislators and employees of the state other than members of the legislative council. Members of such delegations and committees shall serve without pay, but they may be reimbursed for expenses as provided by law;

(4) Endeavor to advance cooperation between this state and other units of government whenever it seems advisable to do so by formulating proposals for interstate compacts and reciprocal or uniform legislation, and by facilitating the adoption of uniform or reciprocal administrative rules and regulations, informal cooperation of governmental offices, personal cooperation among governmental officials and employees, interchange and clearance of research and information, and any other suitable process.

History: En. Sec. 2, Ch. 72, L. 1959.

Title of Act

An act to repeal sections 82-2101, 82-2102, 82-2103, 82-2104, 82-2105, 82-2106, 82-2107, 82-2108, 82-2109, 82-2110, and 82-2111 of the Revised Codes of Montana,

1947, relating to the establishment of the Montana commission on intergovernmental cooperation, its duties, functions, membership, reports and compensation; to provide the legislative council shall be a member of the commission on interstate cooperation; to provide that the state of

Montana shall be a member of the council of state governments; to provide that the council of state governments is to be a joint governmental agency of the state of Montana and of other states which cooperate through it; to provide that the legislative council shall establish such delegations and committees as may be advisable, providing that members of said delegations and committees shall serve without pay, but may be reimbursed for

expenses as provided by law; and providing a repealing clause.

Repealing Clause

Section 1 of Ch. 72, Laws 1959 read "Sections 82-2101, 82-2102, 82-2103, 82-2104, 82-2105, 82-2106, 82-2107, 82-2108, 82-2109, 82-2110, and 82-2111 of the Revised Codes of Montana, 1947, be, and the same are hereby repealed."

82-2113. Council of state governments declared joint governmental agency. In order to facilitate such cooperation, the council of state governments is hereby declared to be a joint governmental agency of this state and of the other states which cooperate through it.

History: En. Sec. 3, Ch. 72, L. 1959.

pealed all acts and parts of acts in conflict therewith.

Repealing Clause

Section 4 of Ch. 72, Laws 1959 re-

CHAPTER 22—SECRETARY OF STATE

Section 82-2212. Expenses incurred, how paid.

82-2205. (137) Repealed.

Repeal

This section (Sec. 405, Pol. C. 1895), relating to the duty of the secretary of

state to receive and keep supplies, was repealed by Sec. 14, Ch. 80, Laws 1961.

82-2212. (144) Expenses incurred, how paid. The expenses incurred by the secretary of state in carrying into effect the provisions of sections 82-2202 to 82-2204 inclusive must be paid out of any moneys specially appropriated for the purpose.

History: En. Sec. 409, Pol. C. 1895; re-en. Sec. 164, Rev. C. 1907; re-en. Sec. 144, R. C. M. 1921; amd. Sec. 30, Ch. 97, L. 1961.

Amendment

The 1961 amendment changed "82-2205" to "82-2204" and after the words "must be" deleted the words "audited by the board of examiners, and."

CHAPTER 25—WAR RECORDS AND RELICS, CUSTODIAN OF

82-2502. (321) Room for storing and safekeeping of records.

Old Governor's Mansion

Chapter 141, Laws 1961, provided for restoration and maintenance of the old governor's mansion in Helena. Said chapter read as follows: "An act to provide for the restoration, preservation, and maintenance of the old governor's mansion, Helena, Montana, as a period home museum and to vest control of the old governor's mansion in the board of trustees of the historical society of the state of Montana, under certain conditions; authorize the said board to collect fees and charges for the use of said mansion, and deposit the same to the credit of the "old governor's mansion fund" and pro-

viding this act shall be in force and effect after its passage and approval until March 1, 1963.

"Section 1. PURPOSE. That for the purpose of restoring, preserving, and maintaining that property at 304 North Ewing Street, Helena, Montana (hereinafter referred to as the old governor's mansion) as a period home museum, and of providing for its use and enjoyment, thereby contributing to the cultural and recreational life of the people, the board of trustees of the historical society of the state of Montana (hereinafter referred to as the board) is hereby vested with the duties and powers hereinafter set forth

under the conditions as in this act provided.

"Section 2. POWERS AND DUTIES. The board shall have jurisdiction, custody and control of the old governor's mansion under the conditions as herein stated. The board is hereby authorized and directed to enter into such contracts and expend such moneys as may be necessary for the restoration, preservation, and maintenance of the old governor's mansion as a period home museum, provided, however, that no contract shall be entered into or other obligation incurred under the provisions of this act until moneys have been appropriated therefor by the legislature or are otherwise made available as herein provided. The board shall also have power in its discretion to receive and accept in the name of the state any gifts, bequests, or contributions of money or other property to be expended or used for any of the purposes of this act.

"Section 3. FEES AND CHARGES. Old Governor's Mansion Fund. The board shall have power to levy and collect reasonable fees or other charges for the use of such privileges and conveniences as may be provided and to grant

such leases and concessions as it may deem advisable. All moneys derived from the activities of the board hereunder and from gifts, bequests and endowments hereunder shall be deposited in the state treasury to the credit of the old governor's mansion fund, which fund is hereby created, and shall constitute a continuing fund to be used and expended by the board for any of the purposes of this act.

"Section 4. CO-OPERATION. In carrying out the provisions of this act, the board may seek and accept the co-operation of other state and local agencies, agencies of federal government, and private organizations and individuals.

"Section 5. CONDITIONS. In no event shall the board become responsible in any way under this act for the restoration, preservation and maintenance of the old governor's mansion until such time as funds are available, either from public or private sources, to carry out the purposes as herein stated.

"Section 6. EFFECTIVE DATE. This act shall be in full force and effect from and after its passage and approval, and shall remain in effect until March 1, 1963."

CHAPTER 31—STATE AGENCY FOR SURPLUS PROPERTY

- Section 82-3102. Authority and duties of the state agency for surplus property.
 82-3104. Authorization for financing.
 82-3105. Superintendent of public instruction—delegating powers and duties —bonding of employees of surplus property agency.
 82-3106. Officers or employees authorized to secure transfer of surplus property.

82-3102. Authority and duties of the state agency for surplus property.

(a) The state agency for surplus property is hereby authorized and empowered (1) to acquire from the United States of America under and in conformance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended, hereinafter referred to as the "act," such property, including equipment, materials, books, or other supplies under the control of any department or agency of the United States of America as may be usable and necessary for purposes of education, public health or civil defense, including research for any such purpose, and for such other purposes as may now or hereafter be authorized by federal law; (2) to warehouse such property; and (3) to distribute such property within the state to tax-supported medical institutions, hospitals, clinics, health centers, school systems, schools, colleges, and universities within the state, and to other nonprofit medical institutions, hospitals, clinics, health centers, schools, colleges, and universities which have been held exempt from taxation under section 501(c)(3) of the United States Internal Revenue Code of 1954 within the state, to civil defense organizations of the state, or political subdivisions and instrumentalities thereof, which are established pursuant to state law, and to such other types of institu-

tions or activities as may now be or hereafter become eligible under federal law to acquire such property.

(b) The state agency for surplus property is hereby authorized to receive applications from eligible institutions for the acquisition of federal surplus real property, investigate the same, obtain expression of views respecting such applications from the appropriate health or educational authorities of the state, make recommendations regarding the need of such applicant for the property, the merits of its proposed program of utilization, the suitability of the property for such purposes, and otherwise assist in the processing of such applications for acquisition of real and related personal property of the United States under section 203(k) of the act.

(c) For the purpose of executing its authority under this act, the state agency for surplus property is authorized and empowered to adopt, amend, or rescind such rules and regulations and prescribe such requirements as may be deemed necessary; and take such other action as is deemed necessary and suitable, in the administration of this act, to assure maximum utilization by and benefit to health, educational and civil defense institutions and organizations within the state from property distributed under this act.

(d) The state agency for surplus property is authorized and empowered to make such certifications, take such action, make such expenditures and enter into such contracts, agreements and undertakings for and in the name of the state (including cooperative agreements with any federal agencies providing for utilization by and exchange between them of the property, facilities, personnel and services of each by the other), require such reports and make such investigation as may be required by law or regulation of the United States of America in connection with the disposal of real property and the receipt, warehousing, and distribution of personal property received by the state agency for surplus property from the United States of America.

(e) The state agency for surplus property is authorized and empowered to act as clearing house of information for the public and private nonprofit institutions, organizations and agencies referred to in subparagraph (a) of this section and other institutions eligible to acquire federal surplus real property, to locate both real and personal property available for acquisition from the United States of America, to ascertain the terms and conditions under which such property may be obtained, to receive requests from the above-mentioned institutions, organizations and agencies and to transmit to them all available information in reference to such property, and to aid and assist such institutions, organizations and agencies in every way possible in the consummation of acquisitions or transactions hereunder.

(f) The state agency for surplus property, in the administration of this act, shall cooperate to the fullest extent consistent with the provisions of the act, with the departments or agencies of the United States of America and shall file a state plan of operation, operate in accordance therewith, and take such action as may be necessary to meet the minimum standards prescribed in accordance with the act, and make such reports

in such form and containing such information as the United States of America or any of its departments or agencies may from time to time require, and it shall comply with the laws of the United States of America and the rules and regulations of any of the departments or agencies of the United States of America governing the allocation, transfer, use or accounting for, property donable or donated to the state.

History: En. Sec. 2, Ch. 136, L. 1953;
amd. Sec. 1, Ch. 166, L. 1957.

Amendment

The 1957 amendment completely revised this section. For section prior to amendment see parent volume.

82-3103. Repealed.

Repeal

This section (Sec. 3, Ch. 136, L. 1953), relating to cooperation with federal de-

partments and agencies, was repealed by Sec. 4, Ch. 166, Laws 1957, effective March 7, 1957.

82-3104. Authorization for financing. The state agency for surplus property shall be self-sustaining and shall pay for its operation and maintenance directly from receipts from surplus property which shall be deposited in the treasury in the federal and private grant clearance fund. At any time the state board of education deems that sufficient surplus has accumulated in the surplus property account, over and above the necessary funds for proper expenditures and reasonable reserve, a rebate shall be made to all institutions as listed in section 82-3102 (a) which have participated in surplus property purchases during the particular period in which this surplus has accumulated. This rebate shall be determined on a ratio of business transacted by each such institution to the total business transacted by the state agency during the time involved.

History: En. Sec. 4, Ch. 136, L. 1953;
amd. Sec. 66, Ch. 147, L. 1963.

shall be deposited in the treasury in the federal and private grant clearance fund" at the end of the first sentence.

Amendment

The 1963 amendment added "which

82-3105. Superintendent of public instruction—delegating powers and duties—bonding of employees of surplus property agency. The state superintendent of public instruction may delegate to any employees of the state agency for surplus property such power and authority as he deems reasonable and proper for the effective administration of this act.

The state superintendent of public instruction may in his discretion bond any person in the employ of the state agency for surplus property handling moneys, signing checks, or receiving or distributing property from the United States under authority of this act.

History: En. as addition to Ch. 31, Title
82, 1947 Code by Sec. 2, Ch. 166, L. 1957.

82-3106. Officers or employees authorized to secure transfer of surplus property. Any provision of law to the contrary notwithstanding, the governing board, or in case there be none, the executive head, of any state department, instrumentality, or agency or of any city, county, school district or other political subdivision may by order or resolution confer upon any officer or employee thereof continuing authority from time to time to secure the transfer to it of surplus property under this act through

the state department of public instruction, donable property division under the provisions of section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended, and to obligate the state or political subdivision and its funds to the extent necessary to comply with the terms and conditions of such transfers. The authority conferred upon any such officer or employee by any such order or resolution shall remain in effect unless and until the order or resolution is duly revoked and written notice of such revocation shall have been received by state department of public instruction, donable property division.

History: En. as addition to Ch. 31, Title 82, 1947 Code by Sec. 3, Ch. 166, L. 1957.

Repealing Clause

Section 4 of Ch. 166, Laws 1957 read "Section 82-3103, Revised Codes of Montana, 1947, and all acts or parts of acts in conflict herewith are hereby repealed."

Effective Date

Section 5 of Ch. 166, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

CHAPTER 32—STATE RECORDS

Section 82-3205. Microfilm division—creation.

82-3201 to 82-3204. Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 189, L. 1953), relating to the destruction of

state records, were repealed by Sec. 33, Ch. 271, Laws 1963.

82-3205. Microfilm division—creation. The director of the historical society shall establish in his department a division to be known as the microfilm division for the preservation by photographic methods of state records required or permitted by law to be preserved, and may employ such personnel as may be necessary for the proper and efficient operation of the division. Provided, however, that it shall be the duty of the department, commission or agency which records are to be preserved to prepare said records as the librarian shall direct.

History: En. Sec. 5, Ch. 189, L. 1953; amd. Sec. 31, Ch. 271, L. 1963.

Amendment

The 1963 amendment substituted "The director of the historical society" for "The librarian" at the beginning of the section.

Separability Clause

Section 32 of Ch. 271, Laws 1963 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applica-

tions, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 33 of Ch. 271, Laws 1963 read "Sections 78-101 through 78-109, 78-201, 78-203 through 78-208, 78-210, 78-211, 78-301, 78-303 through 78-308, 78-401 through 78-416, 78-601 through 78-620, 78-701 through 78-736, 78-801 through 78-818, 78-901 through 78-909, 82-1125, 82-1132, 82-1134, 82-1601 through 82-1606, and 82-3201 through 82-3204, R. C. M. 1947, are repealed."

CHAPTER 33—DEPARTMENT OF ADMINISTRATION

Section 82-3301. Title and purpose of act.

82-3302. Department of administration—controller is chief executive officer.

82-3303. Divisions within department.

82-3304. Duties of controller.

- 82-3305. Adoption of regulations—biennial reports.
- 82-3306. Supervision of mailing facilities.
- 82-3307. Supervision of central telephone switchboard.
- 82-3308. Surveys and allocation of office space.
- 82-3309. Custodial care of capitol buildings and grounds.
- 82-3310. Controller—custodian of state property.
- 82-3311. Records management program.
- 82-3312. Definition of records.
- 82-3313. Destruction of records.
- 82-3314. Definitions of building and construction.
- 82-3315. Preparation of building programs and submittal to the legislative assembly.
- 82-3316. Authority to construct buildings.
- 82-3317. Supervision of construction of buildings.
- 82-3318. General powers and duties of controller.
- 82-3319. Appointment of architects and consulting engineers.
- 82-3320. Policy regarding practice of architecture—preparation of working drawings by department limited.
- 82-3321. Pecuniary interest in construction of buildings prohibited.
- 82-3322. State agencies abolished.

82-3301. Title and purpose of act. This act may be cited as "The Department of Administration Act." It is the purpose of this act to create a more coordinated, responsible, efficient and economical organization by centralizing and consolidating the general administrative and fiscal functions of state government into one department.

History: En. Sec. 1, Ch. 271, L. 1963.

Title of Act

"The Department of Administration Act" creating a department of administration with duties and powers in the areas of accounting, purchasing, planning and construction of state buildings, records management, maintenance and custody of capitol buildings, and general services; abolishing the state records committee, the state laboratory commission, the veterans' memorial fund commission, the

state furnishing board, and the office of capitol custodian; amending sections 26-103, 75-310, 77-417, 77-419, 78-202, 78-302, 82-109.2, 82-308 and 82-3205, R. C. M. 1947; repealing sections 78-101 through 78-109, 78-201, 78-203 through 78-208, 78-210, 78-211, 78-301, 78-303 through 78-308, 78-401 through 78-416, 78-601 through 78-620, 78-701 through 78-736, 78-801 through 78-818, 78-901 through 78-909, 82-1125, 82-1132, 82-1134, 82-1601 through 82-1606, and 82-3201 through 82-3204, R. C. M. 1947.

82-3302. Department of administration—controller is chief executive officer. There is in the state government a department of administration, hereafter referred to as "department." The state controller, ex officio state purchasing agent, hereafter referred to as "controller," is the chief executive officer of the department.

History: En. Sec. 2, Ch. 271, L. 1963.

82-3303. Divisions within department. The department shall consist of the following divisions:

- (1) Accounting
- (2) Purchasing
- (3) Architecture and engineering
- (4) General services

Each division shall be administered by a division head who shall be appointed by, and serve at the pleasure of the controller.

History: En. Sec. 3, Ch. 271, L. 1963.

82-3304. Duties of controller. The controller, in addition to performing the duties assigned by this act, shall continue to perform the duties that are assigned to him elsewhere by law and shall allocate all of these duties among the divisions of the department. The controller shall allocate duties that relate to the handling of public moneys and other fiscal duties in such a manner to insure sound internal fiscal control within the department.

History: En. Sec. 4, Ch. 271, L. 1963.

82-3305. Adoption of regulations—biennial reports. The controller shall adopt and amend regulations, not inconsistent with the laws of the state, necessary for the effective administration of the department. The controller shall report biennially to the governor and the legislature.

History: En. Sec. 5, Ch. 271, L. 1963.

82-3306. Supervision of mailing facilities. The controller shall maintain and supervise any central mailing facilities for state agencies in the capitol area.

History: En. Sec. 6, Ch. 271, L. 1963.

82-3307. Supervision of central telephone switchboard. The controller shall maintain and supervise any central telephone switchboard for state agencies located in Helena.

History: En. Sec. 7, Ch. 271, L. 1963.

82-3308. Surveys and allocation of office space. The controller shall periodically survey the needs of state agencies located in Helena and shall assign space in state office buildings to such agencies. No state agency shall lease, rent or purchase property for quarters in Helena without prior approval of the state controller.

History: En. Sec. 8, Ch. 271, L. 1963.

82-3309. Custodial care of capitol buildings and grounds. (1) It is the duty of the state controller to supervise and direct the work of caring for and maintaining buildings, equipment and grounds in the capitol area. The controller shall include in the department's budget the necessary requests for appropriations for the maintenance, repair, replacement, renewal, or addition to state buildings, equipment and grounds in the capitol area.

(2) No state agency may alter, improve, repair or remodel a state building in the capitol area without the approval of the controller.

History: En. Sec. 9, Ch. 271, L. 1963.

82-3310. Controller—custodian of state property. The state controller is custodian of all state property in the state capitol area.

History: En. Sec. 10, Ch. 271, L. 1963.

82-3311. Records management program. The controller shall establish and administer a records management program for the efficient crea-

tion, utilization, maintenance, retention, preservation and disposal of state records and shall periodically survey current records management practices including the use of space, equipment, supplies, and personnel employed in creating, maintaining, and storing records.

History: En. Sec. 11, Ch. 271, L. 1963.

82-3312. Definition of records. As used in this act the word "records" includes any paper, book, photograph, motion picture film, microfilm, sound recording, map, drawing or other document that has been made or received by a state agency in connection with the transaction of official business and preserved for informational value or as evidence of a transaction. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, and extra copies of documents or publications are not included within the definition of the word "records."

History: En. Sec. 12, Ch. 271, L. 1963.

82-3313. Destruction of records. No records shall be destroyed without the permission of the controller. An agency desiring permission to destroy records shall submit a triplicate list of the records to the controller, showing in writing the nature and quantity of the records and the reasons why they should be destroyed. The controller shall send a copy of the list to the attorney general and the director of the historical society, each of whom shall, within thirty (30) days, return the list together with a statement of any reasons why the records should not be destroyed. If neither the director of the historical society nor the attorney general object, the controller may grant permission to destroy the records.

History: En. Sec. 13, Ch. 271, L. 1963.

82-3314. Definitions of building and construction. In sections 15 through 21 [82-3315 to 82-3321] of this act

(1) "Building" includes:

(a) A building, facility or structure constructed or purchased wholly or in part with state moneys.

(b) A building, facility or structure at a state institution.

(c) A building, facility or structure owned or to be owned by a state agency, including the state highway commission.

(2) "Building" does not include:

(a) A building, facility or structure owned or to be owned by a county, city, town, school district, or special improvement district.

(b) A facility or structure used as a component part of a highway or water conservation project.

(3) "Construction" includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration.

History: En. Sec. 14, Ch. 271, L. 1963.

82-3315. Preparation of building programs and submittal to the legislative assembly. (1) Before July 1 of each even numbered year, each agency and institution of state government shall submit to the controller, on forms furnished by the controller, a proposed long range building

program, if any, for the agency or institution. Each agency and institution shall furnish to the controller any additional information requested by him relating to the utilization of, or need for buildings.

(2) The controller shall examine the information furnished by each agency and institution and shall gather whatever additional information is necessary, and conduct whatever surveys are necessary, in order to provide a factual basis for determining the need for, and the feasibility of the construction of buildings. The information compiled by the controller shall be submitted to the governor before December 1 of each even numbered year.

(3) During the first week of each regular legislative session, the governor shall submit to the legislative assembly:

(a) The requests of all state agencies and institutions compiled in the form of a comprehensive, long range proposed building program, including:

(i) The purpose for which each building would be used.

(ii) The estimated cost of each building, including necessary land acquisition.

(iii) The reasons given by the institution or agency for needing each building.

(iv) A priority order recommended by the agency or institution for each building.

(v) The recommendation of the institution or agency as to when each building is needed.

(vi) Any comments of the governor.

(b) A building program proposed by the governor for the forthcoming biennium in the form of a capital construction budget, including:

(i) The purpose for which each building would be used.

(ii) The estimated cost of each building and necessary land acquisition.

(iii) The reasons for the governor's recommendation to construct each building during the forthcoming biennium.

(iv) The proposed method of financing for each building.

(v) Any long-range building plans.

(vi) Any changes in the law necessary to insure an effective, well-coordinated building program for the state.

History: En. Sec. 15, Ch. 271, L. 1963.

82-3316. Authority to construct buildings. (1) Except as provided in subsection (2) of this section, a building costing more than twenty-five thousand dollars (\$25,000.00) may not be constructed without the consent of the legislative assembly. When a building costing more than twenty-five thousand dollars (\$25,000.00) is to be financed in such a manner as not to require legislative appropriation of moneys, such consent shall be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building.

(b) The regents of the university of Montana may authorize the construction of residence halls, dormitories, apartments and other student

housing facilities; dining rooms and halls and other food service facilities; and student union buildings and facilities.

(c) The regents of the university of Montana, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private moneys, if the construction of such a building will not result in any new programs.

History: En. Sec. 16, Ch. 271, L. 1963.

82-3317. Supervision of construction of buildings. (1) For the construction of a building costing more than ten thousand dollars (\$10,000.00) the state controller shall:

(a) Review and approve all plans and working drawings prepared by architects.

(b) Approve all bond issues or other financial arrangements and supervise and approve the expenditure of all moneys.

(c) Under the supervision and with the approval of the board of examiners, solicit, accept and reject bids and award all contracts to the lowest qualified bidder.

(d) Review and, with the consent of the board of examiners, approve all change orders.

(e) Accept the building when completed according to approved plans and specifications.

(2) It is the intent of the legislative assembly that student housing and other facilities constructed under the authority of the regents of the university of Montana are subject to the provisions of subsection (1) of this section.

History: En. Sec. 17, Ch. 271, L. 1963.

82-3318. General powers and duties of controller. In carrying out his powers relating to the construction of buildings the controller may:

(1) Inspect buildings not under construction.

(2) Contract with the federal government for advance planning funds.

(3) Purchase, lease and acquire by exchange or otherwise, land and buildings in Lewis and Clark county and equipment and furnishings for such buildings.

(4) Issue and sell bonds and other securities.

(5) Maintain an inventory of all buildings.

(6) Appoint an advisory council of licensed architects and consulting engineers to advise and assist him on matters involving their respective professions.

(7) Appoint a project representative to supervise architects' and consulting engineers' inspection of construction of buildings to assure that all construction is in accordance with the contracts, plans and specifications. The cost of such supervision may be charged against moneys available for construction.

History: En. Sec. 18, Ch. 271, L. 1963.

82-3319. Appointment of architects and consulting engineers. The administrative head of the institution or agency for which a building is con-

structed shall appoint any architect or consulting engineer retained for work on the building, subject to approval by the state controller and the state board of examiners.

History: En. Sec. 19, Ch. 271, L. 1963.

82-3320. Policy regarding practice of architecture—preparation of working drawings by department limited. (1) It is the policy of the state not to engage in the practice of architecture; however, this policy shall not be construed as prohibiting the department of administration from

(a) Engaging in pre-planning functions necessary to prepare a building program for presentation to the legislative assembly,

(b) Supervising construction as provided in section 18, subsection (7) [82-3318 (7)] of this act, or

(c) Preparing working drawings for minor projects.

(2) The department of administration is expressly prohibited from preparing working drawings for the construction of a building, when the total cost of the construction will exceed ten thousand dollars (\$10,000.00).

History: En. Sec. 20, Ch. 271, L. 1963.

82-3321. Pecuniary interest in construction of buildings prohibited. Neither the controller nor any employee of the department of administration shall have a direct or indirect pecuniary interest in any contract, transaction or project involving the construction of a building.

History: En. Sec. 21, Ch. 271, L. 1963.

82-3322. State agencies abolished. The state records committee, the state laboratory commission, the veterans' memorial fund commission, the state furnishing board, and the office of capitol custodian are abolished. All records, property and moneys of these agencies are transferred to the department of administration.

History: En. Sec. 22, Ch. 271, L. 1963.

CHAPTER 34—OPEN MEETINGS OF PUBLIC AGENCIES

Section 82-3401. Legislative intent—liberal construction.

82-3402. Meetings of public agencies to be open to public—exceptions.

82-3403. Minutes of meetings—public inspection.

82-3401. Legislative intent—liberal construction. The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the peoples' business. It is the intent of this act that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the act shall be liberally construed.

History: En. Sec. 1, Ch. 159, L. 1963.

Title of Act

An act to provide that all meetings of public or governmental bodies, boards, bureaus, commissions or agencies of the

state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be open to the public and providing exceptions.

82-3402. Meetings of public agencies to be open to public—exceptions.

All meetings of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organization or agencies supported in whole or in part by public funds, or expending public funds, at which any action is taken by such public governmental body, board, bureau, commission or agency of the state or any political subdivision of the state shall be open to the public, except as otherwise specifically provided by law and except any meeting involving or affecting;

(1) National or state security.

(2) The disciplining of any public officer or employee, or any hearing on, or of, a complaint against a public officer or employee, unless the public officer or employee requests an open meeting.

(3) The employment, appointment, promotion, dismissal, demotion or resignation of any public officer or employee, unless the public officer or employee requests an open meeting.

(4) The purchasing of public property, the investing of public funds or other matters involving competition or bargaining which, if made public may adversely affect the public security or financial interest of the state or any political subdivision or agency of the state.

(5) The revocation of a license of any person licensed under the laws of the state or any political subdivision of the state, unless the person licensed requests an open meeting.

(6) Law enforcement, crime prevention, probation or parole.

History: En. Sec. 2, Ch. 159, L. 1963.

82-3403. Minutes of meetings—public inspection. Appropriate minutes of all meetings declared to be open, shall be kept and shall be available for inspection by the public.

History: En. Sec. 3, Ch. 159, L. 1963.

TITLE 83—STATE SOVEREIGNTY AND JURISDICTION

- Chapter 1. Sovereignty and territorial jurisdiction of the state, 83-104.1, 83-113.
5. Acceptance of amendments to enabling act, 83-503.
7. Tort actions against state, 83-701 to 83-707.
8. Jurisdiction of Indian country, 83-801 to 83-806.

CHAPTER 1—SOVEREIGNTY AND TERRITORIAL JURISDICTION OF THE STATE

- Section 83-104.1. Reassumption of jurisdiction over Blackfeet highway.
83-113. Consent to migratory bird reservations—jurisdiction.

83-104.1. Reassumption of jurisdiction over Blackfeet highway. That the provisions of the act of Congress of March 15, 1958, P.L. 85-343, 85th Congress, S.1828, 72 Stat. 35-36, to retrocede to the state of Montana such concurrent police jurisdiction as has been ceded to the United States of America over the rights-of-way of the Blackfeet highway, including the highway itself, and over the rights-of-way of its connection with the Glacier National Park road system on the Blackfeet Indian reservation, including the highways themselves, are hereby accepted by the state of Montana as required by section 2 of said act of March 15, 1958 (72 Stat. 35-36) with the understanding on the part of the state of Montana that the laws and regulations of the United States of America pertaining to Glacier National Park shall cease to apply to the territory of said rights-of-way and highways as in said act of the Congress made and provided.

History: En. Sec. 1, Ch. 157, L. 1963.

Blackfeet Indian reservation in the state of Montana; providing an effective date.

Title of Act

An act to accept the retrocession by the United States of America of concurrent police jurisdiction over the rights-of-way of the Blackfeet highway and over the rights-of-way of its connections with the Glacier National Park road system on the

Effective Date

Section 2 of Ch. 157, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

83-106. (23) Yellowstone National Park.

Compiler's Note

The case of *Yellowstone Park Transp. Co. v. Gallatin County*, 27 F 2d 410,

cited in the annotation to this section, was reversed in 31 F 2d 644.

83-113. Consent to migratory bird reservations—jurisdiction. Consent of the state of Montana is given to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land, water, or land and water, in the state of Montana, as the United States may deem necessary for the establishment of migratory bird reservations in accordance with the act of Congress approved February 18, 1929, (as amended), entitled "An Act to More Effectively Meet the Obligations of the United States under the Migratory Bird Treaty with Great Britain by Lessening the Dangers Threatening Migratory Game Birds from Drainage and other Causes by the Acquisition of Areas of Land and of Water to furnish in Perpetuity Reservations for the Adequate Protection of such Birds; and Authorizing Appropriations for the Establishment of such Areas, their

Maintenance and Improvement and for other Purposes," reserving however, to the state of Montana full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection, and control thereof by the United States under the terms of said act of Congress.

History: En. Sec. 1, Ch. 96, L. 1961.

1929, (as amended), and containing a repealing clause.

Title of Act

An act consenting to the acquisition by the United States of land, water, or land and water, within the state of Montana for migratory bird reservations authorized by the act of Congress of February 18,

Repealing Clause

Section 2 of Ch. 96, Laws 1961 repealed all acts and parts of acts in conflict therewith.

CHAPTER 3—PERSONS COMPOSING THE PEOPLE OF THE STATE—
RESIDENCE, RULES FOR DETERMINING

83-303. (33) Residence, rules for determining.

Resident Freeholder

A freeholder becomes a resident under this section upon union of act and intent. If the intention to establish a permanent residence be ascertained, the recency of the establishment is immaterial. *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 301.

from another state was incapable of establishing residence in Montana where she had no means of support and roamed from place to place for approximately one month. *State ex rel. Lewis and Clark County v. State Board of Public Welfare*, — M —, 376 P 2d 1002, 1003.

Wandering Child

A wandering thirteen-year-old child

References

Cited in *Murphy v. Murphy*, 134 M 594, 335 P 2d 296, 298.

CHAPTER 5—ACCEPTANCE OF AMENDMENTS TO ENABLING ACT

Section 83-503. Acceptance of congressional amendment to sec. 12 of the enabling act.

83-503. Acceptance of congressional amendment to sec. 12 of the enabling act. The state of Montana hereby accepts the amendment to section twelve of the enabling act approved February 22, 1889, (25 Stat. 676), relating to the admission into the Union of the States of North Dakota, South Dakota, Montana and Washington, approved by the President of the United States, February 26, 1957, (Public Law 6, 85th Congress), which amendment reads as follows:

"BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, that section 12 of the act relating to the admission into the Union of the States of North Dakota, South Dakota, Montana and Washington, approved February 22, 1889, is amended to read as follows: 'That upon the admission of each of said States into the Union, in accordance with the provisions of this act, fifty sections of unappropriated public lands within such States, to be selected and located in legal subdivisions as provided in section 10 of this act, shall be, and are hereby, granted to said States for public buildings at the capital of said States for legislative, executive and judicial purposes, including construction, reconstruction, repair, renovation, furnishings, equipment, and any other permanent improvement of such buildings and the acquisition of necessary land for such buildings, and the payment of principal and

interest on bonds issued for any of the above purposes.'

"Sec. 2. This act shall take effect as of February 22, 1889." Approved February 26, 1957.

History: En. Sec. 1, Ch. 209, L. 1957.

Title of Act

An act accepting the amendment enacted by Congress to section twelve of the enabling act approved February 22, 1889, (25 Stat. 676), relating to the admission into the Union of the States of North Dakota, South Dakota, Montana and Washington, approved by the President of the United States, February 26, 1957; and providing for an effective date.

Repealing Clause

Section 2 of Ch. 209, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 209, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.

CHAPTER 7—TORT ACTIONS AGAINST STATE

- Section 83-701. Jurisdiction of district courts—limitation of liability of state to the extent of insurance coverage—no liability for punitive damages or interest—costs.
- 83-702. Practice and procedure.
- 83-703. Right of appeal—bond not to be required of state.
- 83-704. Attorney general—service of process upon—power to arbitrate, compromise and settle.
- 83-705. Judgment as obligation of state.
- 83-706. Effect of insurance—immunity of state for claims in excess of collectible insurance.
- 83-707. Act not to affect causes of action arising under workmen's compensation act.

83-701. Jurisdiction of district courts—limitation of liability of state to the extent of insurance coverage—no liability for punitive damages or interest—costs. The district courts of the state of Montana shall have exclusive jurisdiction to hear, determine, and render judgment to the extent of the insurance coverage carried by the state of Montana on any claim against the state of Montana for money only, accruing on or after the passage and approval of this act, on account of damage to or loss of property, or on account of personal injuries or death caused by the negligence or wrongful act or omission of any employee of the state of Montana, while acting within the scope of his office or employment, under circumstances where the state of Montana, if a private person, would be liable to the claimant for such damage, loss, injury or death, in accordance with the law of the state of Montana. The state of Montana shall be liable in respect of such claims to the said claimant in the same manner and to the same extent as a private individual under like circumstances, except the state of Montana shall not be liable for interest prior to judgment, nor for punitive damages. Cost shall be allowed in all courts to the successful claimant, to the same extent if the state of Montana were a private litigant, except that such costs shall not include attorneys' fees.

History: En. Sec. 1, Ch. 254, L. 1959.

Title of Act

An act permitting actions on tort claims against the state of Montana to the extent of the insurance coverage carried by the state of Montana; describing the

practice and procedure therefor; providing that where insurance is applicable, settlement compromise or judgment shall be subject to such insuring provisions; containing a repealing clause and providing for an effective date.

83-702. Practice and procedure. In actions under the provisions of this act, the forms of process, writs, pleadings and motions, and the practice and procedure shall be the same as if the state of Montana were a private person, and the same provisions for counterclaim and setoff, and for interest upon judgment shall be the same as if the state of Montana were a private person.

History: En. Sec. 2, Ch. 254, L. 1959.

83-703. Right of appeal—bond not to be required of state. The right of appeal from final judgment in the district court shall be governed by the same rules of practice and procedure that exist for private persons, except the state of Montana shall at no time be required to post a bond either on appeal or at any other time during the said litigation.

History: En. Sec. 3, Ch. 254, L. 1959.

83-704. Attorney general—service of process upon—power to arbitrate, compromise and settle. The attorney general of the state of Montana is hereby designated as the person upon whom all process shall be served, and he shall have full charge of such litigation on behalf of the state of Montana, and by and with the consent of the board of examiners of the state of Montana, he is authorized to arbitrate, compromise or settle any claim cognizable under this act, after the institution of any suit thereon, and further, with the approval of the court in which said suit is pending.

History: En. Sec. 4, Ch. 254, L. 1959.

83-705. Judgment as obligation of state. A final judgment shall be the obligation of the state of Montana, and shall be paid in the same manner as other claims against the state.

History: En. Sec. 5, Ch. 254, L. 1959.

83-706. Effect of insurance—immunity of state for claims in excess of collectible insurance. Where collectible insurance coverage from any insurer is available to pay on behalf of, or to indemnify, the state of Montana, for any settlement, compromise or judgment under this act, any cause of action shall be subject to the terms and conditions of such policy or policies of insurance applicable; and in such event the state of Montana shall be immune under this act from any claim or demand, including judgments, in excess of such collectible insurance.

History: En. Sec. 6, Ch. 254, L. 1959.

83-707. Act not to affect causes of action arising under workmen's compensation act. Nothing herein contained shall be construed to affect any cause of action arising under the workmen's compensation act.

History: En. Sec. 7, Ch. 254, L. 1959.

Repealing Clause

Section 9 of Ch. 254, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 8 of Ch. 254, Laws 1959 provided the act should be in effect from and after the date of its passage and approval. Approved March 13, 1959.

CHAPTER 8—JURISDICTION OF INDIAN COUNTRY

- Section 83-801. Criminal jurisdiction of Flathead Indian country to be assumed.
 83-802. Resolution of Indian tribes requesting state jurisdiction—governor's proclamation—consent of county commissioners.
 83-803. Date of assumption of jurisdiction—application of state law in Indian country.
 83-804. Rights, privileges and immunities reserved to Indians.
 83-805. Indian culture protected.
 83-806. Withdrawal of consent to state jurisdiction.

83-801. Criminal jurisdiction of Flathead Indian country to be assumed. The state of Montana hereby obligates and binds itself to assume, as herein provided, criminal jurisdiction over Indians and Indian territory of the Flathead Indian reservation and country within the state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session).

History: En. Sec. 1, Ch. 81, L. 1963.

Title of Act

An act to provide for the assumption of criminal and/or civil jurisdiction over the

Confederated Salish and Kootenai Indians and their reservation and land as authorized by federal law; providing the time and the method thereof, and the duty of the governor with respect thereto.

83-802. Resolution of Indian tribes requesting state jurisdiction—governor's proclamation—consent of county commissioners. Whenever the governor of this state shall receive from the tribal council or other governing body of the Confederated Salish and Kootenai Indian tribes, community, band or group of Indians in this state, a resolution, expressing its desire that its people and lands be subject to the criminal and/or civil jurisdiction of the state of Montana to the extent authorized by federal law and regulation, he shall issue within sixty (60) days a proclamation to the effect that such jurisdiction shall apply to those Indians and their territory, or reservation in accordance with the provisions of this act; provided, that he shall not issue such proclamation until such resolution has been approved in the manner provided for by the charter, constitution or other fundamental law of the tribe or tribes, if said document provides for such approval; provided further that he shall not issue such proclamation until there has been first obtained the consent of the board of county commissioners of each county which encompasses any portion of the reservation of such tribe or tribes.

History: En. Sec. 2, Ch. 81, L. 1963.

83-803. Date of assumption of jurisdiction—application of state law in Indian country. Sixty (60) days from the date of issuance of the proclamation of the governor as provided for by section 2 [83-802] of this act, the state of Montana shall assume jurisdiction over offenses committed by or against Indians in the lands prescribed in the proclamation to the same extent that this state has jurisdiction over offenses committed elsewhere within this state, and the criminal and/or civil laws of this state shall have the same force and effect within such lands as they have elsewhere within this state.

History: En. Sec. 3, Ch. 81, L. 1963.

83-804. Rights, privileges and immunities reserved to Indians. Nothing in this act shall authorize the alienation, encumbrance or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band or community that is held in trust by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the state of Montana to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein; or shall deprive any Indian or any Indian tribe, band or community of any right, privilege or immunity afforded under federal treaty, agreement, statute, or executive order with respect to hunting, trapping, fishing or the control, licensing or regulation thereof.

History: En. Sec. 4, Ch. 81, L. 1963.

83-805. Indian culture protected. Nothing in this act shall deprive, the Indian tribe, band or community from carrying on its age-old tribal dances, feasting or customary Indian celebrations or in any way try to destroy the Indian culture.

History: En. Sec. 5, Ch. 81, L. 1963.

83-806. Withdrawal of consent to state jurisdiction. Any Indian tribe, community, band or group of Indians that may consent to come within the provisions of this act may, within two (2) years from the date of the governor's proclamation, withdraw their consent to be subject to the criminal and/or civil jurisdiction of the state of Montana, by appropriate resolution, and within sixty (60) days after receipt of such resolution the governor shall issue a proclamation to that effect.

History: En. Sec. 6, Ch. 81, L. 1963.

TITLE 84—TAXATION

- Chapter 3. Classification of property for taxation—basis for taxation, 84-301, 84-302, 84-308.
4. Assessment of property—powers, duties and liability of county assessor, 84-406, 84-429.7 to 84-429.13.
 6. Equalization of taxes by county boards of equalization, 84-602 to 84-604.
 7. Equalization of taxes and administration and supervision of all tax laws by state board of equalization, 84-702, 84-708, 84-710, 84-724 to 84-726.
 15. License taxes—corporation license tax, 84-1501, 84-1501.1 to 84-1501.3, 84-1502 to 84-1505, 84-1508, 84-1508.1, 84-1508.2, 84-1511, 84-1515.
 16. License taxes—electrical energy producers, 84-1601.
 18. License taxes—gasoline dealers and distributors—special fuel tax, 84-1801, 84-1801.1, 84-1802, 84-1802.1, 84-1803.1, 84-1805.1, 84-1807, 84-1809, 84-1812(1), 84-1812(2), 84-1813, 84-1817, 84-1818, 84-1818.1, 84-1819, 84-1831 to 84-1835, 84-1839, 84-1840, 84-1842 to 84-1844.
 19. License and other tax proceeds—how disposed of, 84-1901.
 20. License taxes—metalliferous mines, 84-2004, 84-2006, 84-2007.
 21. License taxes—natural gas distributors, 84-2102.
 22. License taxes—oil producers, 84-2202.
 26. License taxes—telephone companies, 84-2601, 84-2602.
 27. Licenses—general provisions concerning county licenses, 84-2708.
 28. Licenses—furnishing trading stamps with sale of merchandise, 84-2805 to 84-2812—Unconstitutional, 378 P 2d 220.
 33. Licenses—moving picture theaters, Repealed—Section 1, Chapter 33, Laws of 1957.
 38. Levy of taxes, 84-3804, 84-3807.
 41. Collection of general property taxes—tax sales—redemption—tax deeds—sale of tax deed lands, 84-4132.1, 84-4198.
 42. Collection of personal property taxes not a lien on real estate—road and poor taxes, 84-4202.
 45. Protest payment of taxes—action to recover, 84-4501.
 47. Cities and towns—taxation and license, 84-4711.
 48. Freight line companies—taxation, 84-4825.
 49. Income tax, 84-4901 to 84-4903, 84-4903.1 to 84-4903.13, 84-4905, 84-4907, 84-4907.1, 84-4910, 84-4911, 84-4914, 84-4915, 84-4922, 84-4923.1, 84-4924, 84-4937, 84-4943, 84-4956.
 52. Livestock taxation, 84-5211, 84-5212, 84-5214.
 54. Mines taxation—general property and net proceeds tax, 84-5403, 84-5408, 84-5409.
 56. Cigarette tax—licenses—stamps, 84-5601, 84-5602, 84-5606, 84-5606.1, 84-5607 to 84-5609, 84-5621.
 62. Mines or wells producing natural gas or petroleum—net proceeds tax, 84-6208.
 65. License taxes—racing associations, 84-6501 to 84-6504.

CHAPTER 3—CLASSIFICATION OF PROPERTY FOR TAXATION—BASIS FOR TAXATION

- Section 84-301. Classification of property for taxation.
- 84-302. Basis for imposition of taxes.
- 84-308. Basis for imposition of taxes on moneys and credits, moneyed capital and bank shares.

84-301. (1999) Classification of property for taxation. For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land by any person or cor-

poration, the surface title to which has passed to another, the assessor and the state and county boards of equalization shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment of the family residence; all agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds, boats and all water craft, harness, saddlery and robes.

Class Three. Livestock, poultry and the unprocessed products of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith; and all office or hotel furniture and fixtures.

Class Four. All land, town and city lots, with improvements, and all trailers affixed to land owned, leased, or under contract of purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five or Class Seven.

Class Five. (a) All moneys and credits, secured or unsecured, including all state, county, school district and other municipal bonds, warrants and securities, without any deduction or offset; provided, however, that the terms "moneys and credits" as herein used shall not embrace the moneyed capital employed in the banking business by any banking corporation or individual in this state.

(b) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by cooperative rural electrical and co-operative rural telephone associations organized under the laws of Montana.

(c) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, and excepting livestock and poultry and the unprocessed products of both.

Class Six. Property formerly included in this class is now classified by section 84-308 of the Revised Codes of Montana, 1947.

Class Seven. All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state board of equalization, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961 within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as

distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state board of equalization in such manner and form as may be required by said board.

Class Eight. All property not included in the seven preceding classes.

History: En. Sec. 1, Ch. 51, L. 1919; amd. Sec. 1, Ch. 248, L. 1921; re-en. Sec. 1999, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1937; amd. Sec. 1, Ch. 107, L. 1941; amd. Sec. 1, Ch. 286, L. 1947; amd. Sec. 1, Ch. 45, L. 1951; amd. Sec. 1, Ch. 178, L. 1951; amd. Sec. 1, Ch. 88, L. 1957; amd. Sec. 1, Ch. 103, L. 1961; amd. Sec. 2, Ch. 239, L. 1961.

Compiler's Note

This section was amended twice in 1961, once by Ch. 103, Laws 1961, approved March 1, 1961, and once by Ch. 239, Laws 1961, approved March 14, 1961. Neither act referred to or contained the amendments made by the other. Chapter 103 contained an emergency clause and provided that it should be in effect upon approval, but Ch. 239 did not. The two amendments do not appear to conflict, and if they do not conflict, both would be in effect. The section set out above incorporates the changes made by both acts.

Amendments

The 1957 amendment in Class Five, subd. (b) inserted the words "and co-operative rural telephone" and deleted a former subd. (d) which read "Industrial property included in Class Four, for a period of three years after such property is first assessed. Industrial property for the purposes of this act shall not be construed to include agricultural or commercial property" and rewrote Class Six, see Class Six above.

Chapter 103, Laws 1961, inserted in the paragraph defining Class Four the words "and all trailers affixed to land owned,

leased, or under contract of purchase by the trailer owner."

Chapter 239, Laws 1961, added the reference to Class Seven at the end of the paragraph defining Class Four; inserted a new paragraph defining Class Seven; and redesignated former Class Seven as Class Eight.

Purpose of Amendment

Section 1 of Ch. 239, Laws 1961, read as follows: "STATEMENT OF PURPOSE. The legislative assembly of the state of Montana hereby declares that it is in the best interests of the people of this state to encourage and stimulate the establishment of new industry within Montana. It recognizes that a new industrial plant does not reach full productivity and competitive capacity during the initial years of its operation. Since taxation of property should be related to property in proportion to its use, productivity, utility, and general setting in the economic organization of society, the purpose of this act is to provide a separate classification for new industrial property which gives proper recognition to these factors and places such property in the proper class for taxation purposes."

Repealing Clauses

Section 2 of Ch. 88, Laws 1957 and Sec. 3 of Ch. 103, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 88, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 4, 1957.

Section 2 of Ch. 103, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 1, 1961.

Bank Shares and Capital

All bank shares and "moneyed capital," of banks are subject to the same classification. *Yellowstone Bank v. State Board*

of Equalization, 137 M 198, 351 P 2d 904, 908.

Pipelines

Pipelines should be classified in class 7 (now Class 8) of this section. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 69, 71.

DECISIONS UNDER FORMER LAW

1951 Amendment Unconstitutional

Chapter 178 of Laws 1951 is an unconstitutional exercise of the legislative function to classify property for taxation. *Victor Chemical Works v. Silver Bow County*, 130 M 308, 301 P 2d 730, 737. (Concurring and dissenting opinion, 130 M 308, 301 P 2d 730, 737.)

Chapter 178 of Laws 1951, by permit-

ting the reclassification of some industrial property into Class 5 while similar property is in Class 4 thwarts the mandate of sections 1 and 11 of Art. XII of the Constitution and is invalid. *Victor Chemical Works v. Silver Bow County*, 130 M 308, 301 P 2d 730. (Concurring and dissenting opinion, 130 M 308, 301 P 2d 730, 737.)

84-302. (2000) Basis for imposition of taxes. As a basis for the imposition of taxes upon the different classes of property specified in the preceding section, a percentage of the true and full value of the property of each class shall be taken as follows:

- Class 1. One hundred per cent of its true and full value.
- Class 2. Twenty per cent of its true and full value.
- Class 3. Thirty-three and one-third per cent of its true and full value.
- Class 4. Thirty per cent of its true and full value.
- Class 5. Seven per cent of its true and full value.
- Class 6. Forty per cent of its true and full value.
- Class 7. Seven per cent of its true and full value.
- Class 8. Forty per cent of its true and full value.

History: En. Sec. 2, Ch. 51, L. 1919; re-en. Sec. 2000, R. C. M. 1921; amd. Sec. 3, Ch. 239, L. 1961.

Amendment

The 1961 amendment inserted a new provision for Class 7 and redesignated former Class 7 as Class 8. See note under sec. 84-301 as to amendment of that section by Ch. 239, Laws 1961.

Separability Clause

Section 5 of Ch. 239, Laws 1961 read

"If any provision of this act, or the application thereof to any person or circumstance, is held unconstitutional, the remainder of the act, or the application of such provisions to other persons or circumstances, shall not be affected thereby."

Repealing Clause

Section 4 of Ch. 239, Laws 1961 repealed all acts and parts of acts in conflict therewith.

84-308. (2000.6) Basis for imposition of taxes on moneys and credits, moneyed capital and bank shares. As a basis for the imposition of taxes upon the different classes of property herein specified, a percentage of the true and full value of each class shall be taken as follows:

Moneys and credits, seven per centum (7%) of true and full value.

Moneyed capital and shares of banks, both national and state, thirty per centum (30%) of true and full value on that portion of the true and full value not represented by surplus, as shown on the books of the bank;

seven per centum (7%) on that portion of the true and full value represented by surplus as shown on the books of the bank; provided that on that portion of any of such surplus which is over and above the amount represented by the stated capital of a bank, the excess shall be subject to thirty per centum (30%) of true and full value. The state board of equalization shall prepare, distribute and cause to be used such forms as it may require to obtain from the banks doing business in this state reports of such facts and figures as may be necessary to ascertain the taxable value of bank shares as a basis for the imposition of taxes.

History: En. Sec. 6, Ch. 64, L. 1929; amd. Sec. 1, Ch. 172, L. 1957.

Amendment

The 1957 amendment added all that portion of the third paragraph beginning with the words "on that portion of the true and full value and not represented by surplus * * *" to end of section.

Repealing Clause

Section 2 of Ch. 172, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 172, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 8, 1957.

Effect of Amendment

Laws 1957, Ch. 172, which amended this section does not result in remitting, releasing, or diminishing an "obligation or liability" held or owned by the state or city. *Yellowstone Bank v. State Board of Equalization*, 137 M 198, 351 P 2d 904, 908.

Parties to Action for Taxes

Where the banks of county paid their 1957 taxes in accordance with the taxable value determined under this section before amendment by Laws of 1957, Ch. 172, as a part of a compromise settlement, an action by the state on relation of the county was dismissed as moot where banks of county were not made parties to the action. *State ex rel. Cascade County v. Ryan*, 137 M 379, 351 P 2d 916, 918.

CHAPTER 4—ASSESSMENT OF PROPERTY—POWERS, DUTIES AND LIABILITY OF COUNTY ASSESSOR

- Section 84-406. When assessment to be made—credits must be assessed, how.
 84-429.7. Classification and appraisal—duties of county commissioners.
 84-429.8. Classification and appraisal fund—tax levy for.
 84-429.9. Assessments to be made on classification and appraisal.
 84-429.10. Initiation and completion of classification and appraisal.
 84-429.11. Notice of classification and appraisal to owners—appeals.
 84-429.12. Classification and appraisal—general and uniform methods.
 84-429.13. Work done under prior law.

84-401. (2001) Property assessed at cash value.

Assessment of Pipelines

The state board of equalization did not act arbitrarily or capriciously in assessing pipeline at 50% of the current replacement cost, even though there was

an increase in the assessed value of the property over the preceding year. *Treasure State Pipe Line Co. v. County of Toole*, 136 M 108, 345 P 2d 162.

84-406. (2002) When assessment to be made—credits must be assessed, how. (1) The assessor must, between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and assess all property in his county subject to taxation, except such as is required to be assessed by the state board of equalization, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at twelve o'clock M. of the first Monday of March next preceding, except that such procedure shall not apply to motor vehicles which are required by subdi-

vision (2) hereof to be assessed as of the first day of January; but no mistake in the name of the owner or supposed owner of real property renders the assessment thereof invalid. Credits must be assessed as provided in section 84-101, subdivision 6.

(2) The assessor must ascertain and assess all motor vehicles in his county subject to taxation as of January 1st in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such vehicle was at twelve o'clock M. of the first day of January in each year.

Nothing herein contained shall relieve the applicant for registration or reregistration of any motor vehicle so assessed or subject to assessment of the duty of paying taxes thereon as a condition precedent to registration or reregistration in the event said taxes have not been paid by any prior applicant or owner in all cases where required to be paid.

History: En. Sec. 13, p. 78, L. 1891; re-en. Sec. 3700, Pol. C. 1895; re-en. Sec. 2510, Rev. C. 1907; re-en. Sec. 2002, R. C. M. 1921; amd. Sec. 3, Ch. 158, L. 1933; amd. Sec. 1, Ch. 30, L. 1935; amd. Sec. 9, Ch. 72, L. 1937; amd. Sec. 2, Ch. 256, L. 1955; amd. Sec. 2, Ch. 245, L. 1963. Cal. Pol. C. Sec. 3628.

Amendment

The 1963 amendment deleted the words "which are not a part of the stock of merchandise of a licensed dealer and" following "motor vehicles" in subsection (1); and deleted from the end of the first paragraph of subsection (2) a clause reading, "save and except that motor vehicles held for sale in the stock of any duly licensed motor vehicle dealer, shall be assessed as merchandise to such licensed dealer by whom the same were owned or claimed, or in whose possession or control the same were held at twelve o'clock of the first Monday of March in each year, and at the time such motor vehicles are assessed as merchandise each licensed dealer shall file with the assessor a description of each motor vehicle so assessed, including the make, year model, engine and serial number, manufacturer's model or letter, gross weight, and, with respect to trucks, the rated capacity thereof."

Individual Assessment

Only individual assessment by indi-

84-429. (2023) Land—how assessed.

References

Cited in *Flom v. Unknown Heirs of Conrad*, 132 M 574, 319 P 2d 499, 503.

84-429.1 to 84-429.6. Repealed.

Repeal

These sections (Secs. 1 to 6, Ch. 198, L. 1955), relating to classification and appraisal of all taxable lands, were repealed

vidual ownership will satisfy this section. *Vail v. Custer County*, 132 M 205, 315 P 2d 993, 998.

Where irrigation district's purported special assessments were made en bloc, not individually, the assessments were insufficient to create a lien and district was not entitled to notice of application for tax deeds under section 84-4151. *Vail v. Custer County*, 132 M 205, 315 P 2d 993, 999.

Limitation of Action

Irrigation district's purported special assessments for 1921 through 1926 and the collection of water district charges due thereunder in 1949 was barred by the provisions of section 89-1804, subd. 5. *Vail v. Custer County*, 132 M 205, 315 P 2d 993, 1000.

Situs of Property

The first Monday in March is significant to determine and fix the situs and ownership of property for tax purposes. *Yellowstone Bank v. State Board of Equalization*, 137 M 198, 351 P 2d 904, 907.

Time of Assessment

The "assessing" of property is done after situs is acquired. *Yellowstone Bank v. State Board of Equalization*, 137 M 198, 351 P 2d 904, 907.

by Sec. 8, Ch. 191, Laws 1957, effective March 9, 1957. For almost identical provisions see 84-429.7 to 84-429.13.

DECISIONS UNDER FORMER LAW

Unconstitutional

This act purports to tax for a public purpose, one class of property only and entirely excludes and exempts all other classes of property. It exempts all personal property from taxation and is there-

fore violative of section 2 of article XII of the Montana Constitution. *Schladweiler v. State Board of Equalization*, 131 M 13, 306 P 2d 673, reaffirming *Stoner v. Timmons*, 59 M 158, 196 P 519.

84-429.7. Classification and appraisal—duties of county commissioners.

It is hereby made the duty of the board of county commissioners of the several counties of the state of Montana to accomplish, in such manner as the state board of equalization may direct, the following:

- a. The classification of all taxable lands.
- b. The appraisal of all taxable city and town lots.
- c. The appraisal of all taxable rural and urban improvements.

A record thereof must be kept upon such maps, plats and forms, and entered in such books of record as may be prescribed by the state board of equalization. Such maps, plats, forms and books of record shall be official records of the county. A certified copy of all such records as may be desired shall be furnished to the state board of equalization, and the state board of equalization shall provide for the payment to the several counties of the cost of preparing such copy of the records so provided for, as they may require.

After compliance with the other provisions of this act, it shall be the duty of the board of county commissioners to maintain current, the classification of all taxable lands and appraisal of city and town lots, and rural and urban improvements, as provided for herein.

History: En. Sec. 1, Ch. 191, L. 1957.

Title of Act

An act providing for the classification of lands, and the appraisal of city and town lots and rural and urban improvements in the state of Montana for assessment and taxation purposes; defining the duties of the boards of county commissioners, county assessors, and the state board of equalization in connection therewith, providing for a tax levy; providing for an effective date and repealing sections 84-430 to 84-437 inclusive, Revised Codes of Montana of 1947, chapter 198 of the Session Laws of 1955, and all acts and parts of acts in conflict herewith.

Additional Levy for Classification and Appraisal

Chapter 226, Laws 1963, authorized additional tax levies for completion of the classification and appraisal program under certain condition. The act read: "An act to provide that where any county has not completed the classification and appraisal program as provided in section 84-429.7, R. C. M. 1957, due to lack of funds, county commissioners may levy up to two mills (2) in the 1963-64 fiscal year to complete the program.

"Section 1. In any county where the board of county commissioners has failed to complete the classification and appraisal as was made its duty in section 84-429.7, R. C. M. 1957, and is unable to do so because of insufficient funds from the levies which were authorized for said purpose under section 84-429.8, R. C. M. 1957, the board of county commissioners in such county is hereby authorized to levy, and it shall be its duty to so impose a tax upon all property in the county subject to taxation an amount not to exceed two mills (2) in the fiscal year 1963-64, to carry out the provisions of the classification and appraisal program as expeditiously as possible.

"All proceeds from such tax shall be deposited by the county treasurer to the credit of such classification and appraisal, fund, and shall be used exclusively for classification and appraisal purposes. Any unexpended balance at the end of any fiscal year shall remain in such fund and shall be available to carry out the provisions of the classification and appraisal program as was provided in section 84-429.7, R. C. M. 1957. All costs and expenses incurred by the board of county commissioners for such work, labor, services and supplies required under the classification and

appraisal act shall be paid by warrants drawn on said funds on claims approved by said board; the board of county commissioners in any such county coming under the provisions of this act is hereby authorized to declare an emergency and issue such warrants in the manner provided in section 16-1907, R. C. M. 1947.

"Section 2. No moneys collected under the provisions of this act shall be used other than for the purposes as herein provided, and no moneys collected under the provisions of this act shall be diverted in any way to any other funds which may now exist or which may hereafter be created in the county treasurer's office, except that the legislature may modify or repeal the restrictions herein contained. The provisions of this section shall in no way prohibit the deposit of moneys collected under this act to the credit of a classification and appraisal fund already in existence.

"Section 3. Any county official who shall violate the provisions of section 2, as regards the diversion or use of funds

shall be guilty of a felony and upon conviction shall be fined not less than one thousand dollars (\$1,000), and in addition may be imprisoned in the state prison for a period not to exceed one year (1).

"Section 4. The provisions of this act shall in no way be construed to apply to those counties which have completed the classification of all taxable lands, the appraisal of all taxable city and town lots, and the appraisal of all taxable rural and urban improvements.

"Section 5. This act shall become effective immediately upon its passage and approval." Approved March 9, 1963.

Jurisdiction of District Court

District court had jurisdiction of action by taxpayers against state and county boards of equalization where the amended complaint sufficiently alleged that the appraisal leading to an assessment was being done contrary to this act. *State ex rel. Fulton v. District Court*, — M —, 369 P 2d 416, 417.

84-429.8. Classification and appraisal fund—tax levy for. The board of county commissioners shall create and establish a fund to be known as the "Classification and Appraisal Fund," and may levy annually a tax not to exceed two (2) mills upon all property in the county subject to taxation, the proceeds of which shall be deposited by the county treasurer to the credit of such fund, and any balance unexpended at the end of any fiscal year shall remain in such fund and be available to carry out the provisions of this act. All costs and expenses incurred by the board of county commissioners for such work, labor, services and supplies required by this act, shall be paid by warrants drawn on said fund on claims approved by said board; and the board of county commissioners is hereby authorized to declare an emergency and issue such warrants in the manner provided by section 16-1907 of the Revised Codes of Montana of 1947.

History: En. Sec. 2, Ch. 191, L. 1957.

84-429.9. Assessments to be made on classification and appraisal. The county assessor must base the assessments of all lands, city and town lots, and all improvements on the classification and appraisal as made by the board of county commissioners.

History: En. Sec. 3, Ch. 191, L. 1957.

84-429.10. Initiation and completion of classification and appraisal. It is the intent of this act that classification and appraisal be initiated expeditiously, but in no event later than July 1, 1957 and shall be completed not later than five (5) years from the effective date of this act.

History: En. Sec. 4, Ch. 191, L. 1957.

84-429.11. Notice of classification and appraisal to owners—appeals. It shall be the duty of the board of county commissioners to cause to be mailed to each owner a notice of the classification of the land owned by him and the appraisal of the improvements thereon. If the owner of any

land and improvements be dissatisfied with the classification of his land or the appraisal of the improvements the board of county commissioners shall give reasonable notice to such taxpayer of the time and place of hearing and hear any testimony or other evidence which the taxpayer may desire to produce at such time and afford the opportunity to other interested persons to produce evidence at such hearing and thereafter the board of county commissioners shall determine the true and correct classification of such land or appraisal of such improvements and forthwith notify the taxpayer of their determination and when so determined the land shall be classified and improvements appraised in the manner ordered by the board of county commissioners. If any property owner shall feel aggrieved at the classification and/or the appraisal so made by the board of commissioners he shall have the right to appeal to the state board of equalization whose findings shall be final subject to the right of review in the proper court or courts.

History: En. Sec. 5, Ch. 191, L. 1957.

84-429.12. Classification and appraisal—general and uniform methods. It is hereby made the duty of the state board of equalization to implement the provisions of this act by providing:

1. For a general and uniform method of classifying lands in the state of Montana for the purpose of securing an equitable and uniform basis of assessment of said lands for taxation purposes.

All lands shall be classified according to their use or uses and graded within each class according to soil and productive capacity. In such classification work, use shall be made of soil surveys and maps and all other pertinent available information. All lands must be classified by forty (40) acre tracts or fractional lots.

2. For a general and uniform method of appraising city and town lots.

3. For a general and uniform method of appraising rural and urban improvements.

4. For a general and uniform method of appraising timber lands.

History: En. Sec. 6, Ch. 191, L. 1957.

84-429.13. Work done under prior law. Any and all work performed or caused to be performed by the boards of county commissioners of the various counties for the classification of lands and appraisal of city and town lots and rural and urban improvements, under the provisions of chapter 198, Laws of 1955, is hereby declared to be valid and of the same effect as if performed under the provisions of this act.

History: En. Sec. 7, Ch. 191, L. 1957.

Repealing Clause

Section 8 of Ch. 191, Laws 1957 read "Sections 84-430 to 84-437, inclusive, of the Revised Codes of Montana, 1947, and chapter 198 of the Session Laws of 1955,

and all acts and parts of acts in conflict herewith are hereby repealed."

Effective Date

Section 9 of Ch. 191, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.

84-430 to 84-437. (2024 to 2031) Repealed.**Repeal**

These sections (Secs. 1 to 8, Ch. 239, L. 1921), relating to a uniform method of classification of property for tax purposes, were repealed by Sec. 8, Ch. 191, Laws 1957, effective March 9, 1957.

These sections had earlier been repealed by Sec. 7, Ch. 198, Laws 1955, effective March 4, 1955. See Repeal Note under these sections in the parent volume.

CHAPTER 5—ASSESSMENT BOOK—FORM—CONTENTS—DISPOSAL**84-501. (2048) Property—how listed.****References**

Cited in *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 914.

CHAPTER 6—EQUALIZATION OF TAXES BY COUNTY BOARDS OF EQUALIZATION

- Section 84-602. Equalization of assessments.
 84-603. Application for reduction in valuations.
 84-604. Examination of applicant.

84-602. (2114) Equalization of assessments. The board has power after giving notice, in writing, to the taxpayer, by registered or certified mail, addressed to him at his last known place of residence, of its intention to increase or lower his assessment contained in the assessment book, so as to equalize the assessment of the property contained therein and make the assessment conform to the true value of such property in money, which notice shall specify the date and hour when he may appear and be heard thereon, which date shall not be less than five (5) days from date of mailing such notice, and immediately after reaching a decision, the board shall notify the taxpayer, in writing, of such decision, specifying the change, if any, made in the assessment; said notice to be given by registered or certified mail, addressed to the taxpayer at his last known place of residence. The board also has power, in the event that any class of property is assessed as a class, at more or less than its actual value, by the county assessor and the valuation of such property within the county demands a general reclassification by raising or lowering all of the property in said class a certain percentage, the same may be done by the board of county commissioners.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; this section en. Sec. 2573, Rev. C. 1907; re-en. Sec. 2114, R. C. M. 1921; amd. Sec. 1, Ch. 43, L. 1927; amd. Sec. 1, Ch. 187, L. 1933; amd. Sec. 1, Ch. 196, L. 1957.

Amendment

The 1957 amendment in the first sentence substituted the words "in writing, to the taxpayer, by registered or certified

mail, addressed to him at his last known place of residence, of its intention to increase or lower his assessment" for the words "in such matter as it may by rule prescribe, to increase or lower any assessment," inserted the words "which notice shall specify the date and hour when he may appear and be heard thereon, which date shall not be less than five (5) days from date of mailing such notice" and inserted the words "or certified" before the word "mail" near the end of sentence.

84-603. (2115) Application for reduction in valuations. No reduction must be made in the valuation of property unless the party affected there-

by, or his agent, makes and files with the board on or before the 1st day of August, a written application therefor, verified by his oath. Said application shall state the post office address of the applicant, shall specifically describe the property involved and shall state the facts upon which it is claimed such reduction should be made. The board of county commissioners shall, however, have the right to raise or lower the valuation of all of one class of property in a county, as provided in the preceding section.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2574, Rev. C. 1907; re-en. Sec. 2115, R. C. M. 1921; amd. Sec. 2, Ch. 187, L. 1933; amd. Sec. 1, Ch. 103, L. 1945; amd. Sec. 2, Ch. 196, L. 1957. Cal. Pol. C. Sec. 3674.

Amendment

The 1957 amendment inserted the words "state the post office address of the applicant" in the second sentence.

References

Cited or applied in *Treasure State Pipe Line Co. v. County of Toole*, 136 M 108, 345 P 2d 162, 163.

84-604. (2116) Examination of applicant. Before the board grants any application or makes any reduction applied for, it must examine on oath, the person or agent making the application, touching the value of the property of each person. No reduction must be made unless such person or agent makes an application, as provided in the preceding section, and attends and answers all questions pertinent to the inquiry; except where the investigation is made by the county commissioners, as such board of equalization, and the change applies to all of a certain class of property in the county. The testimony of all witnesses upon such hearing must be reduced to writing and preserved, and transcribed if taken in shorthand or stenotype. The date of hearing, the proceedings before the board, and the decision, must be entered upon the minutes of the board, and the board shall notify the applicant of its decision, by registered or certified mail within three (3) days thereafter.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2575, Rev. C. 1907; re-en. Sec. 2116, R. C. M. 1921; amd. Sec. 3, Ch. 187, L. 1933; amd. Sec. 3, Ch. 196, L. 1957. Cal. Pol. C. Sec. 3675.

words "as such board of equalization" in the second sentence and added the third sentence.

Repealing Clause

Section 4 of Ch. 196, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1957 amendment substituted "any application" for "the application" and "each person" for "such person" in the first sentence; inserted the words "as provided in the preceding section" and the

Effective Date

Section 5 of Ch. 196, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.

84-605. (2116.1) Change of valuation of class of property, etc.

Intervention of Court

Court may not intervene where action of board is not arbitrary, fraudulent or contrary to law. *State ex rel. Reid v. District Court*, 134 M 128, 328 P 2d 634, 635.

Writ of Prohibition

Action of district court in issuing writ of prohibition against state board of equalization was premature where it prohibited the board from proceeding further under this section and prevented the board from discharging its constitutional duties. *State ex rel. Reid v. District Court*, 134 M 128, 328 P 2d 634, 635.

CHAPTER 7—EQUALIZATION OF TAXES AND ADMINISTRATION AND SUPERVISION OF ALL TAX LAWS BY STATE BOARD OF EQUALIZATION

- Section 84-702. Qualification and compensation.
 84-708. Powers and duties.
 84-710. Notice of intention to change assessment.
 84-724. Destruction of tax records authorized—procedure.
 84-725. Suspense account for receipts and refunds.
 84-726. Refund of overpayments—time of filing claims for refund—procedure.

84-701. (2122.1) State board of equalization—appointment of members, etc.

- References** ing opinion); Blair v. Potter, 132 M 176, 315 P 2d 177, 182.
 Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 401 (dissent-)

84-702. (2122.2) Qualification and compensation. The persons to be appointed as members of the board of equalization shall be such as are known to possess knowledge of the subject of taxation and skill in matters pertaining thereto. No person so appointed shall hold any other office under the laws of this state nor any other state, nor any office under government of the United States, or of any other state. He shall devote his entire time to the duties of the office and shall not hold any position of trust or profit, nor engage in any occupation or business interfering or inconsistent with his duties, or serve on or under any committee of any political party, or take part either directly or indirectly in any political campaign in the interest of any political party, or organization or candidate for office. Each member shall receive an annual salary of not more than ten thousand dollars (\$10,000) payable in equal monthly installments. The member elected chairman as provided for in 84-703, R.C.M. 1947, shall receive additional compensation of not more than five hundred dollars (\$500) per annum payable in the same manner as the salary. He shall also be paid his actual traveling and other expenses when away from the capitol on official business.

History: En. Sec. 2, Ch. 3, L. 1923; amd. Sec. 1, Ch. 109, L. 1953; amd. Sec. 8, Ch. 225, L. 1963.

provision for maximum salaries of \$10,000 for a provision fixing the salaries at \$7,000; inserted the sentence providing extra compensation for the chairman; and made a minor change in phraseology.

Amendment

The 1963 amendment substituted the

84-706. (2122.6) Office, furnishings and supplies.

- References** M 357, 303 P 2d 393 at 397 (dissenting opinion).
 Cited or applied in State v. Rother, 130

84-708. (2122.8) Powers and duties. It shall be the duty of the board and it shall have power and authority in addition to any authority under the present statutes:

(1) to (5). * * * [Same as parent volume.] ✓

(6) To have and exercise general supervision over the administration of the assessment and tax laws of the state, and over assessors, county boards of equalization, boards of county commissioners, and other officers of municipal corporations, having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property be made relatively just and equal at true value in substantial

compliance with law, and to supervise the administration of all revenue laws of the state and assist in their enforcement, and for that purpose shall call an annual meeting of all county assessors to be held at the state capitol and notice shall be given to each county assessor at least ten (10) days before such meeting, and it shall be the duty of all county assessors to attend and the costs of their attendance shall be paid by the respective counties. Further, the state board of equalization is empowered to organize, and it shall be its duty to schedule and hold area schools within the state for appraisers and assessors as often as is deemed necessary in the judgment of the board and the costs of such appraisers and assessors attending shall be borne by the respective counties. Further, the state board shall determine if there is a need for a taxing, assessing, and appraising school, and such school shall be held, when deemed necessary, on the campus of Montana state university in cooperation with the bureau of business and economic research and the school of business administration, providing that there are university facilities and authorities available. The board shall notify all assessors and appraisers and county commissioners at least six (6) months before such school is scheduled and it shall be the duty of all assessors and appraisers to attend and the cost of their attendance shall be borne by the respective counties. Further, one or more members of the board shall visit at least one fourth ($\frac{1}{4}$) of the counties of the state annually, and shall visit every county in the state at least once in four (4) years to examine the work and methods of county assessors, boards of county commissioners, county boards of equalization, and county treasurers in their assessment and equalization of taxes on all kinds of property within the county.

(7) to (17). * * * [Same as parent volume.] ✓

(18) To transmit to the governor and to each member of the legislature twenty (20) days before the meeting of the legislature, a report of the board, showing all the taxable property of the state and the value of the same in tabulated form, with recommendations for improvements in the system of taxation, together with such measures as may be formulated for the consideration of the legislature; and to include therein a report showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures.

History: En. Sec. 8, Ch. 3, L. 1923; amd. Sec. 1, Ch. 137, L. 1957; amd. Sec. 1, Ch. 227, L. 1963.

Amendments

The 1957 amendment in subd. 18 added the words "and to include therein a report showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures" and deleted a former subd. (19) which read "(19) To exercise and perform such further powers and duties as are or may

be granted to or imposed upon the board by law."

The 1963 amendment substituted all that portion of subsection (6) following "for that purpose" in the first sentence for "may visit each county in the state whenever deemed necessary, and may call, not to exceed one meeting of the county assessors each year at the capitol, for consultation and instruction, the expense of such attendance to be paid by the respective counties."

Repealing Clause

Section 2 of Ch. 137, Laws 1957 re-

pealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 137, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

Intervention of Court

Court may not intervene where action of the board is not arbitrary, fraudulent or contrary to law. State ex rel. Reid v. District Court, 134 M 128, 328 P 2d 634, 635.

Powers of State Board of Equalization

Board is charged with the duty of adjusting and equalizing the valuation of all taxable property among the several

counties and between individual taxpayers. State ex rel. Reid v. District Court, 134 M 128, 328 P 2d 634, 635.

Writ of Prohibition

District court acted prematurely in issuing writ prohibiting state board of equalization from proceeding further under section 84-605, holding a public hearing and equalizing or increasing the assessed values of farm lands in county, which prevented board from discharging its constitutional duties. State ex rel. Reid v. District Court, 134 M 128, 328 P 2d 634, 635.

References

Cited in Blair v. Potter, 132 M 176, 315 P 2d 177, 182.

84-710. (2122.10) Notice of intention to change assessment. When the state board of equalization shall contemplate making any change in the assessment of any property assessed to any particular person (except in a case where an appeal has been filed with the state board) said board shall, before making any change in such assessment, fix a time and place for a hearing thereon, and give to such taxpayer written notice of such hearing by certified letter deposited in the post office postpaid, and directed to said taxpayer at his last known place of residence, at least ten (10) days before the day fixed for such hearing. Such notice shall state the purpose of such hearing and the time and place when the same will be held.

When the state board of equalization shall contemplate raising or lowering the assessed valuation of any one or more classes of property in any county, it shall give notice of its contemplated action to the board of county commissioners of the county in which such class or classes of property is situated, in such manner as it shall deem proper and sufficient, and shall fix a time and place within the county in which such change of assessment is proposed for a hearing thereon; provided, however, that if the change affects one or more classes of property common to more than one county the board shall fix the time and place of hearing so as to accommodate the counties interested. At the time and place fixed for such hearing any taxpayer or any officer of any municipal corporation interested therein may appear and be heard.

History: En. Sec. 10, Ch. 3, L. 1923; amd. Sec. 1, Ch. 89, L. 1959.

Amendment

The 1959 amendment, in the first paragraph, substituted "certified letter" for "registered letter."

Repealing Clause

Section 2 of Ch. 89, Laws 1959 repealed all acts and parts of acts in conflict therewith.

References

Cited in State ex rel. Reid v. District Court, 134 M 128, 328 P 2d 634, 635.

84-724. Destruction of tax records authorized—procedure. Notwithstanding the provisions of any other chapter of this code, the state board of equalization is authorized to destroy tax records more than five (5) years old, as shall be determined to be of no further value.

Authorization for destruction of tax records shall be by unanimous vote of the members of the state board of equalization entered upon an authenticated list of records authorized to be destroyed. A copy of the authorization and authenticated list shall be entered in the minutes of the board by its secretary.

History: En. Sec. 1, Ch. 187, L. 1963.

Title of Act

An act providing for the destruction of tax records.

Repealing Clause

Section 2 of Ch. 187, Laws 1963 repealed

all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 187, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 7, 1963.

84-725. Suspense account for receipts and refunds. The state board of equalization shall establish a suspense account in the state treasury for the purpose of conveniently processing receipts and for paying refunds for overpayments of inheritance taxes collected by county treasurers and all other taxes collected by the board. All moneys received by the board shall be temporarily credited by the state treasurer to the board's suspense account. Each month the board shall send to the treasurer and to the controller a distribution sheet designating the amount to be deposited in each treasury fund and in each account.

History: En. Sec. 1, Ch. 126, L. 1963.

Title of Act

An act creating a state board of equalization suspense account for the temporary deposit of moneys; authorizing the state board of equalization to refund overpay-

ments of the inheritance tax and all other taxes collected by the board, plus any interest and penalty due the taxpayer, from the suspense account; amending sections 91-4418, 84-4501, 84-4825, 84-1812, 84-1818 R. C. M. 1947 and repealing sections 84-4953 and 84-4957 R. C. M. 1947.

84-726. Refund of overpayments—time of filing claims for refund—procedure. (1) When there has been an overpayment of the inheritance tax collected by county treasurers or any other tax collected by the state board of equalization, and there is no law providing for a refund, the board shall refund the amount of the overpayment to the taxpayer, plus any interest and penalty due the taxpayer, as provided in subsection (2) of this section.

(2) No refund or payment shall be allowed unless a claim is filed by the taxpayer before the expiration of five (5) years from the time the tax was paid. Within six (6) months after the claim is filed the state board of equalization shall examine the claim and either approve or disapprove it. If the claim is approved the credit or refund shall be made to the taxpayer within sixty (60) days after the claim is approved; if the claim is disallowed, the state board of equalization shall so notify the taxpayer and shall grant a hearing on the claim. If the board disapproves a claim after holding a hearing, the determination of the board may be reviewed as provided by section 84-4923.1, R. C. M. 1947.

History: En. Sec. 2, Ch. 126, L. 1963.

CHAPTER 9—TELEGRAPH, TELEPHONE, ELECTRIC POWER AND OTHER LINES ASSESSMENT BY STATE BOARD OF EQUALIZATION

84-905. (2143) Assessment of property—apportionment, etc.

Apportionment among Counties

Apportionment means the process by which the state board of equalization spreads out the total value of a system

among the counties through which the system passes. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 61.

CHAPTER 15—LICENSE TAXES—CORPORATION LICENSE TAX

Section 84-1501. Corporation license tax—organizations exempt therefrom.

84-1501.1. Definitions.

84-1501.2. Election by small business corporation.

84-1501.3. Small business option unavailable on dissolution—exception.

84-1502. Deductions allowed in computing income.

84-1503. Segregation of income within and without state.

84-1504. Computation of license tax—return of net income to be filed.

84-1505. Assessment and collection of tax.

84-1508. Regulations—attendance of witnesses—arbitrary assignment of net income.

84-1508.1. Determination of tax liability—interest on deficiencies and overpayments.

84-1508.2. Periods of limitation—waiver.

84-1511. Return and payment of tax by corporations on dissolution or cessation of business—declaration of policy.

84-1515. Reviver of corporation after suspension or forfeiture.

84-1501. (2296) Corporation license tax—organizations exempt therefrom. The term corporation includes associations, joint stock companies, common law trusts and business trusts which do business in an organized capacity whether created under and pursuant to state laws, agreements, declarations of trust. Every corporation, except as hereinafter provided, organized and existing under the laws of the state of Montana and engaged in business therein, shall annually pay to the state treasurer, as a license fee for carrying on business in said state of Montana, such percentage or percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth; and every corporation, except as hereinafter provided, organized and existing under the laws of any other state or country, or the United States, and engaged in business in the state of Montana, shall annually pay for the exclusive use and benefit of the state of Montana a license fee for carrying on its business in the state of Montana of such percentage or percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth.

The percentage of net income to be paid under this section shall be five per centum (5%) of all net income for the taxable period, provided however, that as to all taxable periods ending on or after December 31, 1960, whether on a calendar or fiscal year basis, the percentage of net income to be paid under this act shall be four and one-half per centum (4½%). Every corporation subject to taxation under this act shall, in any event, pay a minimum tax of not less than ten dollars (\$10).

There shall not be taxed under this title any income received by any—

(a). Labor, agricultural or horticultural organization;

(b). Fraternal beneficiary, society, order or association operating under the lodge system or for the exclusive benefit of the members of fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident or other benefits to the members of such society, order or association or their dependents;

(c). Cemetery company owned and operated exclusively for the benefit of its members;

(d). Corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(e). Business league, chamber of commerce, or board of trade, not organized for profit, and no part of the net income of which inures to the benefit of any private stockholder or individual;

(f). Civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare;

(g). Club organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

(h). Farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues and fees collected from members for the sole purpose of meeting its expenses;

(i). Any cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis;

(j). Corporations or associations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

(k). In determining the license fee to be paid under this act, there shall not be included any earnings derived from any public utility managed or operated by any subdivision of the state, or from the exercise of any governmental function.

History: En. Sec. 1, Ch. 79, L. 1917; Subd. 16 amd. Sec. 1, Ch. 64, L. 1921; re-en. Sec. 2296, R. C. M. 1921; amd. Sec. 1, Ch. 166, L. 1933; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92, L. 1937; amd. Sec. 1, Ch. 232, L. 1957; amd. Sec. 1, Ch. 264, L. 1959; amd. Sec. 1, Ch. 155, L. 1961.

Amendments

The 1957 amendment substituted "five (5) per centum" for "three (3) per centum" both times it appears in the first paragraph and raised the minimum tax from \$5 to \$10.

The 1959 amendment, in the first paragraph, substituted the phrase "such percentage or percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth" each time it appears for the phrases "five (5) per centum upon the total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana, including interest on bonds, notes or other interest bearing obligations of residents, corporate or otherwise, and including the income

derived from dividends on capital stock or from net earnings of resident corporations whose net income is taxable under this title" and "five (5) per centum upon the total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana, including the interest on bonds, notes or other interest bearing obligations of residents, corporate or otherwise, and including the income derived from dividends on capital stock, or from net earnings of resident corporations, joint stock companies or associations whose net income is taxable under this title." The amendment also added what is now the second paragraph with the exception of the last sentence in that paragraph.

The 1961 amendment redesignated with letters subdivisions which had been designated First, Second, etc.; deleted from the exemption paragraph two subdivisions which read "Second. Mutual savings bank not having a capital stock represented by shares;" and "Fourth. Domestic building and loan associations or cooperative bank without capital stock, organized and operated for mutual purposes and without profit;"; and substituted subd. (i) for a subdivision which read:

"Eleventh. Labor, agricultural or horticultural cooperatives organized and operated on a cooperative basis; (a) for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or (b) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses. Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation or 6 per centum per annum, whichever is greater on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association; nor shall exemption be denied any such association because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose. Such an association may market the products of nonmembers in

an amount the value of which does not exceed the value of the products marketed for members, and may purchase supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 per centum of the value of all its purchases. Business done with the United States, state of Montana or its political subdivisions shall be exempt under this act. Any cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electricity on a cooperative basis."

Separability Clause

Section 2 of Ch. 264, Laws 1959 read "If any portion, section, subsection, paragraph, sentence, clause, or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the remainder of the act."

Repealing Clauses

Section 3 of Ch. 232, Laws 1957, Sec. 4 of Ch. 264, Laws 1959 and Sec. 3 of Ch. 155, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 2 of Ch. 232, Laws 1957 read "This act shall be effective as to all taxable periods ending on or after December 31, 1957, whether on the calendar or fiscal year basis."

Section 3 of Ch. 264, Laws 1959 read "This act shall be effective as to all taxable periods ending on or after December 31, 1958, whether on the calendar or fiscal year basis."

Section 2 of Ch. 155, Laws 1961 read "This act shall be in full force and effect as to all taxable periods ending after December 31, 1960, whether on a calendar or fiscal year basis."

Building and Loan Associations

Dividends paid by building and loan associations are deductible from gross income in determining corporation license taxes. *Home Bldg. & Loan Assn. of Helena v. Fulton*, — M —, 375 P.2d 312, 314.

Church Society Engaged in Agriculture

A corporation described as an international church society which devotes itself to farming, stock growing, and all other branches of agriculture, in which members live communal lives in colonies, which is devoted exclusively to agricultural pursuits for the livelihood of its

members, and in which income is used to provide for the needs of its members and for the acquisition of additional property, is not exempt from the corporation license tax on the basis of the exemption granted to corporations organized exclusively for religious purposes or the exemption to corporations exclusively organized for holding title to and collecting income from property, or under the exemption granted to labor, agricultural or horticultural organizations. *State v. King Colony Ranch*, 137 M 145, 350 P 2d 841.

Construction

There is no conflict between this section and section 7-122 and 7-159, since they deal with separate and distinct taxes. *Home Bldg. & Loan Assn. of Helena v. Fulton*, — M —, 375 P 2d 312, 313.

Cooperative Corporations

Cooperative corporations doing business in Montana and subject to corporation license tax may exclude or deduct from gross income any amounts paid as patronage dividends. *Fulton v. Farmers Union Grain Terminal Assn.*, — M —, 374 P 2d 231, 237.

Interest on United States Obligations

Interest on the obligations of the United States must be included in computing the corporate license tax since the United States is a "resident" within the meaning of the provision fixing the tax at a percentage of the net income received "from all sources within the state." *Montana Bank v. Casey*, 135 M 104, 337 P 2d 935.

References

State ex rel. Fulton v. District Court, 139 M 573, 366 P 2d 435, 437.

84-1501.1. Definitions. (a) Small business corporation. For purposes of this act, the term "small business corporation" means a corporation doing business in Montana, and which does not—

- (1) have more than ten (10) shareholders;
 - (2) have as a shareholder a person (other than an estate) who is not an individual;
 - (3) have a nonresident alien as a shareholder; and
 - (4) have more than one class of stock.
- (b) Electing small business corporation. For purposes of this act, the term "electing small business corporation" means, with respect to any taxable year, a small business corporation which has made an election under this act, in effect for such taxable year.

History: En. 84-1501.1 by Sec. 1, Ch. 122, L. 1959.

Compiler's Note

A preliminary clause of this act read as follows: "Chapter 15 of Title 84 of the Revised Codes of Montana, 1947, is amended by addition of a new section entitled, 'Election of Certain Small Business Corporations as to Taxable Status' and numbered 84-1501.1, as follows." Then sections 1 and 2 were set out in the chapter. Section 1 was entitled "Definitions" while section 2 was entitled "Election by Small Business Corporation."

Title of Act

An act relating to the taxation of small business corporations and providing the definition of a small business corporation; and providing for election to be treated as a small business corporation; and providing for the taxation of corporate earnings through personal income tax of the stockholders; and providing for the retention of the minimum corporation license tax; and repealing all acts and parts of acts in conflict herewith.

84-1501.2. Election by small business corporation. (a) Eligibility. Except as provided in subsection (f), any small business corporation may elect, in accordance with the provisions of this section, not to be subject to the taxes imposed by this chapter. Such election shall be valid only if all persons who are shareholders in such corporation—

- (1) on the first day of the first taxable year for which such election is effective, if such election is made on or before such first day, or

(2) on the day on which the election is made, if the election is made after such first day, consent to such election.

(b) Effect. If a small business corporation makes an election under subsection (a), then—

(1) with respect to the taxable years of the corporation for which such election is in effect, such corporation shall not be subject to the taxes imposed by this chapter and, with respect to such taxable years and all succeeding taxable years, the provisions of this act shall apply to such corporation, and

(2) with respect to the taxable years of a shareholder of such corporation in which or with which the taxable years of the corporation for which such election is in effect end, the provisions of this act shall apply to such shareholder, and with respect to such taxable years and all succeeding taxable years, the provisions of this act shall apply to such shareholder.

(c) Where and how made.

(1) In general. An election under subsection (a) may be made by a small business corporation for any taxable year at any time during the first month of such taxable year, or at any time during the month preceding such first month. Such election shall be made in such manner as the state board of equalization shall prescribe by regulations.

(2) Taxable years beginning before date of enactment. An election may be made under subsection (a) by a small business corporation for its first taxable year which begins after December 31, 1958, and on or before the date of the enactment of this subchapter, and ends after such date at any time—

(A) within the 90-day period beginning on the day after the date of the enactment of this subchapter, or

(B) if its taxable year ends within such 90-day period, before the close of such taxable year.

An election may be made pursuant to this paragraph only if the small business corporation has been a small business corporation (as defined in this act) on each day after the date of the enactment of this subchapter and before the day of such election.

(d) Years for which effective. An election under subsection (a) shall be effective for the taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation, unless it is terminated, with respect to any such taxable year, under subsection (e).

(e) Termination.

(1) New shareholders. An election under subsection (a) made by a small business corporation shall terminate if any person who was not a shareholder in such corporation—

(A) on the first day of the first taxable year of the corporation for which the election is effective, if such election is made on or before such first day, or

(B) on the day on which the election is made, if such election is made after such first day, becomes a shareholder in such corporation and does not consent to such election within such time as the state board of equalization shall prescribe by regulations. Such termination shall be effective for the taxable year of the corporation in which such person becomes a shareholder in the corporation and for all succeeding taxable years of the corporation.

(2) Revocation. An election under subsection (a) made by a small business corporation may be revoked by it for any taxable year of the corporation after the first taxable year for which the election is effective. An election may be revoked only if all persons who are shareholders in the corporation on the day on which the revocation is made consent to the revocation. A revocation under this paragraph shall be effective—

(A) for the taxable year in which made, if made before the close of the first month of such taxable year.

(B) for the taxable year following the taxable year in which made, if made after the close of such first month, and for all succeeding taxable years of the corporation. Such revocation shall be made in such manner as the state board of equalization shall prescribe by regulations.

(3) Ceases to be small business corporation. An election under subsection (a) made by a small business corporation shall terminate if at any time—

(A) after the first day of the first taxable year of the corporation for which the election is effective, if such election is made on or before such first day, or

(B) after the day on which the election is made, if such election is made after such first day, the corporation ceases to be a small business corporation (as defined in this act). Such termination shall be effective for the taxable year of the corporation in which the corporation ceases to be a small business corporation and for all succeeding taxable years of the corporation.

(f) Election after termination. If a small business corporation has made an election under subsection (a) and if such election has been terminated or revoked under subsection (e), such corporation (and any successor corporation) shall not be eligible to make an election under subsection (a) for any taxable year prior to its fifth taxable year which begins after the first taxable year for which such termination or revocation is effective, unless the state board of equalization consents to such election.

(g) This election shall not be effective unless the corporate net income or loss of such electing corporation shall have been included in the stockholders' adjusted gross income as such is defined in section 84-4905 Revised Codes of Montana, 1947, as amended.

(h) Every electing corporation shall be required to pay the minimum fee of ten dollars (\$10.00) required by section 1501 [84-1501].

History: Sec. 2, Ch. 122, L. 1959.

Repealing Clause

Compiler's Note

The bracketed reference to 84-1501 was added by the compiler.

Section 3 of Ch. 122, Laws 1959 repealed all acts and parts of acts in conflict therewith.

84-1501.3. Small business option unavailable on dissolution—exception. In the case of corporation dissolution no benefits may be taken under the "small business act" or under any law or regulation shifting the tax to be paid from the corporation to the shareholders, unless all shareholders agree to assume personal income tax liability the same as they would bear if they were residents of this state.

History: En. Sec. 2, Ch. 60, L. 1963.

"This act shall be in effect for taxable years ending on or after December 31, 1962."

Effective Date

Section 3 of Ch. 60, Laws 1963 read

84-1502. (2297) Deductions allowed in computing income. In computing the net income the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

1. All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

2. All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear of property arising out of its use or employment in the business or trade. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements or betterments made to increase the value of any property or estate and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

3. In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the state board of equalization; provided, however, for the purpose of determining depletion, depreciation and obsolescence, in all cases not expressly provided for in this act, the provisions of the most recent act of Congress of the United States, commonly known as the fed-

eral income tax act, and the rules, regulations and decisions thereunder, insofar as the same are applicable and pertinent and not repugnant to or inconsistent with the express provisions of this act, shall be the rule of decision by the state board of equalization.

4. The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived; but no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance or improvement of property or for the conduct of business unless the income from such property or business would be taxable under this act.

5. Taxes paid within the year except not to include the following:

- (a) Taxes imposed by this act.
- (b) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.
- (c) Taxes on or according to or measured by net income of profits imposed by authority of the government of the United States.

Taxes deductible under this act shall be construed to include taxes imposed by any county, school district or municipality of this state.

6. In the case of insurance companies, in addition to the above, the net addition required by law to be made within the year to reserve funds, and paid within the year on policy and annuity contracts.

History: En. Sec. 2, Ch. 79, L. 1917; amd. Sec. 1, Ch. 69, L. 1919; amd. Sec. 1, Ch. 258, L. 1921; re-en. Sec. 2297, R. C. M. 1921; amd. Sec. 2, Ch. 166, L. 1933; amd. Sec. 1, Ch. 133, L. 1947; amd. Sec. 1, Ch. 263, L. 1959.

Amendment

The 1959 amendment in subd. 1 substituted "or incurred during the taxable year" for "within the year"; inserted the words "subject to the limitation herein-after contained"; added the last sentence to that subdivision and substituted present subd. 5 for the prior one, for text of which see parent volume.

Separability Clause

Section 2 of Ch. 263, Laws 1959 read "If any portion, section, subsection, paragraph, sentence, clause, or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the remainder of the act."

Repealing Clause

Section 3 of Ch. 263, Laws 1959 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 263, Laws 1959 read "The provisions of this act shall apply to all taxable years ending after June 30, 1959."

84-1503. (2297.1) Segregation of income within and without state. If the income of any corporation from sources within the state cannot be properly segregated from income without the state, then, in that event, the amount of the net income returned shall be that proportion of the taxpayer's total net income which the taxpayer's gross business done in the state of Montana bears to the total gross business of the taxpayer, and apportionment shall be made under the rules and regulations prescribed by the state board of equalization, giving consideration to sales, property and payroll and such other factors as may be deemed applicable; provided, however, that the state board of equalization shall, upon the presentation of satisfactory evidence, determine that the income from sources within the state of Montana may be properly segregated from income from sources without the state of Montana and shall allow separate accounting.

The board shall publish not less than once a year, all rules and regulations pertaining to this section. All decisions by the board under this section shall be subject to judicial review in an action prosecuted by the corporation in the district court of Lewis and Clark county. The taxpayer cannot change from one method of accounting to another method of accounting without first obtaining permission from the board.

History: En. Sec. 3, Ch. 166, L. 1933; amd. Sec. 1, Ch. 219, L. 1957.

Repealing Clause

Section 2 of Ch. 219, Laws 1957 repealed all acts or parts of acts in conflict therewith.

Amendment

The 1957 amendment added the proviso clause to the first sentence and added the second, third and fourth sentences.

84-1504. (2299) Computation of license tax—return of net income to be filed. (1). * * * [Same as parent volume.] ✓

(2) Every corporation, subject to the license fee herein imposed, shall for each year hereafter, for the year ending on the thirty-first day of December, or for its fiscal year selected under the provisions hereof, render a true and accurate return of its annual net income in the manner and form to be prescribed by the state board of equalization, and containing such facts, data and information as are appropriate and in the opinion of the state board of equalization necessary to determine the correctness of the net income returned and to carry out the provisions of this act. The return shall be signed by the president, vice-president, or other principal officer, and by the treasurer, assistant treasurer, or chief accounting officer. If the corporation is reporting on a calendar year basis the return shall be filed with the state board of equalization on or before the fifteenth day of May in each year, and if reporting on a fiscal year basis the return shall be filed with said board on or before the fifteenth day of the fifth month following the close of its fiscal year. Upon application a corporation shall be allowed an automatic extension of time for filing its return to the fifteenth day of the third month following the date prescribed for filing of its tax return. The application is to be made on such forms as the board of equalization shall prescribe. The board of equalization may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists. The term gross income means the income from all sources within the state of Montana recognized in the determination of the corporation's federal income tax liability; but shall include interest exempt from federal income tax. The term "net income" means the gross income of the corporation less the allowable deductions. However, the definitions of gross income and net income set forth in this section shall not be construed as allowing the deductions set forth in section 243 of the Federal Internal Revenue Code as now written, or as that section shall be labeled or amended. The term "fiscal year" means an accounting period of twelve (12) months ending on the last day of any month other than December.

(3). * * * [Same as parent volume.] ✓

History: En. Sec. 4, Ch. 79, L. 1917; re-en. Sec. 2299, R. C. M. 1921; amd. Sec. 1, Ch. 146, L. 1923; amd. Sec. 1, Ch. 165, L. 1947; amd. Sec. 1, Ch. 235, L. 1961; amd. Sec. 3, Ch. 186, L. 1963.

Amendments

The 1961 amendment inserted in subd. (2) the sentence defining "gross income" and the sentence following the definition of "net income".

The 1963 amendment substituted "signed" for "sworn to" in the second sentence of subd. (2); substituted "fifteenth day of May" and "fifteenth day of the fifth month" for "thirty-first day of March" and "last day of the third month" in the third sentence of subd. (2); and inserted the fourth, fifth, and sixth sentences (pertaining to extensions of time for filing returns) in subd. (2).

Effective Dates

Section 2 of Ch. 235, Laws 1961 read "This act shall apply to all taxable years ending after December 31, 1960.

Section 3 of Ch. 235, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 14, 1961.

Cooperative Corporations

Amounts paid as patronage dividends by cooperative corporations doing business in Montana may be excluded or deducted from gross income in computing corporation license tax. *Fulton v. Farmers Union Grain Terminal Assn.*, — M —, 374 P 2d 231, 237.

84-1505. (2300) Assessment and collection of tax. (1) Assessment and payment of tax, penalty and interest. All taxpayers shall compute the amount of tax payable under this act and shall remit such amount to the state board of equalization on or before the fifteenth day of the fifth month following the close of the taxable period. If the tax is not paid on or before the due date, there shall be assessed a penalty of ten per cent (10%) of the amount of the tax, unless it is shown that the failure was due to reasonable cause and not due to neglect. If any tax due under this chapter is not paid when due, by reason of extension granted, or otherwise, interest shall be added thereto at the rate of six per cent (6%) per annum from the due date until paid.

(2) Levy upon and sale of property for payment of corporation license taxes. If any tax imposed by this act or any portion of such tax is not paid within sixty (60) days after the same becomes due, the board shall issue a warrant under its official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the corporation owning the same, found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant, and to return such warrant to the board and pay to it the money collected by virtue thereof by a time to be therein specified, not more than sixty (60) days from the date of the warrant. The sheriff shall within five (5) days after the receipt of the warrant, file with the clerk of the district court of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns, the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the corporation against whom it is levied in the same manner as a judgment docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the

board a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof, such agent shall have the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. If a warrant be returned not satisfied in full, the board shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax.

(3) Action by attorney general. Action may be brought at any time by the attorney general of the state at the instance of the board, in the name of the state to recover the amount of any taxes, penalties and interest due under this act.

History: En. Sec. 5, Ch. 79, L. 1917; re-en. Sec. 2300, R. C. M. 1921; amd. Sec. 2, Ch. 146, L. 1923; amd. Sec. 1, Ch. 209, L. 1945; amd. Sec. 1, Ch. 102, L. 1961; amd. Sec. 4, Ch. 186, L. 1963.

Amendments

The 1961 amendment added subdivisions (2) and (3) to the section and designated the former section as subd. (1).

The 1963 amendment completely rewrote subdivision (1). Before the amendment, subdivision (1) read the same as the entire section in the parent volume.

Repealing Clause

Section 3 of Ch. 102, Laws 1961 re-

pealed all acts and parts of acts in conflict therewith.

Effective Date

Section 2 of Ch. 102, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 1, 1961.

Limitation on Action of Board

Under this section, the board of equalization is limited to going back no more than five years to recover corporation license taxes alleged to be due. *State v. King Colony Ranch*, 137 M 145, 350 P 2d 841.

84-1508. (2303) Regulations—attendance of witnesses—arbitrary assignment of net income. The state board of equalization shall have power to prescribe forms for the returns and notices and such other regulations as may from time to time be found necessary for the purpose of carrying into effect the provisions of this act. Jurisdiction is hereby conferred upon the district court of the first judicial district of the state of Montana, in and for the county of Lewis and Clark, to compel attendance of witnesses to testify before the state board of equalization, together with the production of books and such other testimony by appropriate process. When the state board of equalization has reason to believe that the business of any corporation is so conducted as either directly or indirectly to distort the true net income of the corporation and the net income properly attributable to this state, whether by the arbitrary shifting of income through price fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another corporation carrying on business under a substantially common control, it may require the disclosure of such facts as it deems necessary for the proper computation of the entire net income and the net income properly attributable to this state, and in determining the same, the board shall have regard to the fair profits which would normally arise from the conduct of the business.

History: En. Sec. 8, Ch. 79, L. 1917; 4, Ch. 146, L. 1923; amd. Sec. 4, Ch. 166, re-en. Sec. 2303, R. C. M. 1921; amd. Sec. L. 1933; amd. Sec. 5, Ch. 186, L. 1963.

Amendment

The 1963 amendment deleted sentences reading, "If the state board of equalization has reason to believe that the amount of any income return is understated, it shall give notice in writing of not less than five (5) days to the corporation making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated may increase the same accordingly. Such corporations may furnish sworn testimony to prove any relevant fact bearing upon said return" and "Upon the determination by the state board of equalization of the amount of tax due from any and all corporations under the provisions of this act, the state board of equalization shall mail a notice of the amount of taxes thus de-

termined to be due to the corporation making such return. Such corporation shall thereupon remit the amount of such tax to the state treasurer."

Effective Date

Section 6 of Ch. 186, Laws 1963 read "This act shall be in effect for taxable years ending on or after June 30, 1963."

Regulations of Board

Since the board of equalization has power, under this section, to prescribe regulations for enforcement of the chapter, a writ of prohibition issued by a district court is improper as a means of reviewing the regulations on the merits. State ex rel. Fulton v. District Court, 139 M 573, 366 P 2d 435, 437.

84-1508.1. Determination of tax liability—interest on deficiencies and overpayments. (a) Deficiency assessments. If, the state board of equalization determines that the amount of tax due is greater than the amount disclosed by the return, it shall mail to the taxpayer a notice of the additional tax proposed to be assessed. Within thirty (30) days after the mailing of the notice, the taxpayer may file with the state board of equalization a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the thirty (30) day period. If such protest is filed, the state board of equalization shall reconsider the proposed assessment, and if the taxpayer has so requested, shall grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented in the event of an oral hearing, the state board of equalization's action upon the protest is final when it mails notice of its action to the taxpayer.

When a deficiency is determined and the tax becomes final, the state board of equalization shall mail notice and demand to the taxpayer for the payment thereof, and the tax shall be due and payable at the expiration of ten (10) days from the date of such notice and demand. Interest on any deficiency assessment shall bear interest from the date specified in section 84-1505 for payment of the tax. A certificate by the state board of equalization of the mailing of the notices specified in this subsection shall be prima facie evidence of the computation and levy of the deficiency in tax and of the giving of the notices.

(b) Overpayment of tax—refunds and credits. If the state board of equalization determines that the amount of tax, penalty or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger or consolidation, or to its shareholders upon dissolution.

If the state board of equalization disallows any claim for refund, it shall notify the taxpayer accordingly. At the expiration of thirty (30) days from the mailing of the notice, the state board of equalization's action shall become final, unless within the said thirty (30) day period the taxpayer appeals in writing from the action of said board. If such appeal is made, the state board of equalization shall reconsider its action, and if the taxpayer has so requested, shall grant the taxpayer an oral hearing. After consideration of the appeal and evidence presented in the event of an oral hearing, the state board of equalization shall forthwith mail notice to the taxpayer of its determination. The board's determination is final when it mails notice of its action to the taxpayer.

(c) Except as hereinafter provided for, interest shall be allowed on overpayments at the rate of six per cent (6%) per annum from the due date of the return or from the date of overpayment (whichever date is later) to the date the board of equalization approves refunding or crediting of the overpayment. Interest shall not accrue during any period the processing of a claim for refund is delayed more than thirty (30) days by reason of failure of the taxpayer to furnish information requested by the state board of equalization for the purpose of verifying the amount of the overpayment. No interest shall be allowed (1) if the overpayment is refunded within six (6) months from the date the return is due or from the date the return is filed, whichever is later; or (2) if the amount of interest is less than one dollar (\$1.00).

A payment not made incident to a bona fide and orderly discharge of an actual corporation license tax liability or one reasonably assumed to be imposed by this law, shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 1, Ch. 186, L. 1963.

Title of Act

An act relating to the corporation license; providing for the determination of corporation license tax liability on deficiencies and overpayments; providing for periods of limitation—waiver; amending section 84-1504, R. C. M. 1947, to provide for an automatic extension; amending sec-

tion 84-1505, R. C. M. 1947, to provide for computation of tax and return by the taxpayer by the fifteenth day of the fifth month following the close of the taxable period; providing for a ten per cent (10%) penalty; providing six per cent (6%) per annum interest rate; amending section 84-1508, R. C. M. 1947, to delete the procedure for handling tax understatements.

84-1508.2. Periods of limitation—waiver. (1) Except as otherwise provided in section 84-1513, no deficiency shall be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within five (5) years from the date the return was filed. For the purposes of this section a return filed before the last day prescribed for filing shall be considered as filed on that day. Where before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit shall be allowed or paid with respect to the year for which a return is filed after five (5) years from the last day prescribed for filing the return or after one (1) year from the date

of the overpayment, whichever period expires the later, unless before the expiration of such period the taxpayer files a claim therefor or the state board of equalization has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) of this section to extend the time within which the state board of equalization may propose an additional assessment, the period within which a claim for refund or credit may be filed, or a credit or refund allowed in the event no claim is filed, shall automatically be so extended.

History: En. Sec. 2, Ch. 186, L. 1963.

84-1511. (2303.3) Return and payment of tax by corporations on dissolution or cessation of business—declaration of policy. (1) It is hereby declared that the policy of the state of Montana, both at the time of the enactment of the corporation license tax law and at all times since, has been and still is that every corporation doing business in Montana shall pay an excise tax for the exercise of such privilege and that the amount of such tax shall be based upon the total taxable net income of such corporations during the entire period of time they are engaged in business in this state. No remission of that obligation for the last year in which a corporation engages in business in Montana was intended by the original enactment of this section.

(2) Therefore, every corporation which shall be dissolved or cease to do business in Montana at any time during any year, shall, before such dissolution or cessation of business, make a return and pay the corporation license tax determined on the basis of its net income for the final period in which it did business in this state at the rate provided in section 84-1501, in addition to all other corporation license taxes for which such corporation may then be liable.

History: En. Sec. 7, Ch. 166, L. 1933; amd. Sec. 1, Ch. 67, L. 1943; amd. Sec. 1, Ch. 60, L. 1963.

Amendment

The 1963 amendment substituted "the corporation license tax determined on the basis of its net income for the final period in which it did business in this state at the rate provided in section 84-1501" in subsection (2) for "a corporation license tax in the amount of three per cent (3%) of its total taxable net income (as such income is defined by section 84-1501) during the last year in which it did

business in this state"; and deleted from the end of subsection two sentences which read: "Such payment shall be deemed an accelerated payment of an additional tax for the last year in which such corporation did business in Montana, based on its net income up to the time of its dissolution or cessation of business, and which said income had not theretofore been used in measuring the license tax liability of such corporation. The state board of equalization may grant a reasonable extension of time for filing said return, upon good cause being shown."

84-1513. (2303.5) Action in case of false or fraudulent returns.

Limitation on Action of Board

Under section 84-1505, the board of equalization is limited to going back no more than five years to recover corpora-

tion license taxes alleged to be due. State v. King Colony Ranch, 137 M 145, 350 P 2d 841.

84-1515. (2303.7) Reviver of corporation after suspension or forfeiture. Any corporation which has suffered the suspension or forfeiture referred

to in the preceding section may be relieved therefrom upon making application therefor in writing supported by a certificate from the state board of equalization showing that the required return has been made and filed and/or that the tax and interest and penalties have been paid, for which the suspension or forfeiture occurred. Application for reviver may be made by any stockholder or creditor of the corporation or by a majority of the surviving trustees or directors, and the same shall be filed with the secretary of state, for which he shall receive a filing and recording fee of five dollars (\$5.00). In case the application is made in any taxable year other than the taxable year in which the suspension or forfeiture occurred the applicant shall pay twice the amount of the tax and penalties due the state for the taxable year in which the suspension or forfeiture occurred, and upon such payment the secretary of state shall issue a certificate of reviver for which he shall collect a fee of five dollars (\$5.00) and thereupon the applicant shall be revived. The reviver shall be without prejudice to any action, defense or right which has accrued by reason of the original suspension or forfeiture. The certificate of reviver shall be prima facie evidence of the reviver. Any certificate of reviver provided for in this section may be recorded in the office of the county recorder in any county of this state.

History: En. Sec. 11, Ch. 166, L. 1933; amd. Sec. 1, Ch. 49, L. 1947; amd. Sec. 15, Ch. 117, L. 1961.

Amendment

The 1961 amendment at the end of the second sentence inserted the words "for

which he shall receive a filing and recording fee of five dollars (\$5.00)" and near the end of the third sentence inserted "for which he shall collect a fee of five dollars (\$5.00)."

CHAPTER 16—LICENSE TAXES—ELECTRICAL ENERGY PRODUCERS

Section 84-1601. Electrical energy producers' license tax.

84-1601. (2343.1) Electrical energy producers' license tax. That in addition to the license tax now provided by law, each and every individual, firm, partnership, common law trust, corporation, association or other organization now engaged in the generation, manufacture or production of electricity, and electrical energy in the state of Montana, either through water power or by any other means, for barter, sale or exchange and hereinafter referred to as the "producer," shall on or before the fifteenth day of each calendar month beginning with the fifteenth day of August, 1957, render a statement to the state board of equalization of the state of Montana, showing the gross amount of money received on account of sales of electricity and electrical energy during the preceding calendar month without any deduction, and shall pay a license tax thereon in the sum of one and one-quarter per cent ($1\frac{1}{4}\%$) of such gross amount as shown on such statement in the manner and within the time hereinafter provided.

History: En. Sec. 1, Ch. 51, Ex. L. 1933; amd. Sec. 1, Ch. 83, L. 1937; amd. Sec. 1, Ch. 214, L. 1957.

Amendment

The 1957 amendment substituted "August, 1957" for "April 1934" and raised the license tax from 1% to $1\frac{1}{4}\%$.

CHAPTER 18—LICENSE TAXES—GASOLINE DEALERS AND DISTRIBUTORS—SPECIAL FUEL TAX

Section 84-1801.	Definitions.
84-1801.1.	Gasoline license tax—amount—evaporation and other loss.
84-1802.	Dealers' statements—amount of tax—gasoline tax exemption certificates.
84-1802.1.	Payment or credit of gasoline tax in event of change in rate of said tax.
84-1803.1.	Enforcement powers of board.
84-1805.1.	Records maintained by local governmental agencies issuing exemption certificates.
84-1807.	Procedure in case of failure to file statement or pay tax—lien of tax.
84-1809.	Invoice of dealers.
84-1812(1).	Distribution and use of proceeds of tax.
84-1812(2).	Distribution and use of proceeds of tax—funds.
84-1813.	Tax to be collected on motor fuel, when.
84-1817.	Distribution of state highway construction funds.
84-1818.	Refund of gasoline license tax—procedure.
84-1818.1.	Date of mailing deemed date of filing or receipt—timely mailing bars penalties and tolls—statutory time limitations.
84-1819.	Penalty for false statements, unlawfully obtaining refunds, or unlawful use of gasoline tax exemption certificates.
84-1831.	Definitions.
84-1832.	Tax imposed.
84-1833.	Special fuel dealers' and special fuel users' licenses and special fuel vehicle permits.
84-1834.	Special fuel dealers' and special fuel users' records.
84-1835.	Monthly returns and payments.
84-1839.	Violations and penalties.
84-1840.	Disposition of funds.
84-1842.	Temporary permits to unlicensed users of special fuel vehicles—agents by whom issued.
84-1843.	Fees for temporary permits—time of expiration—disposition of fees—forms.
84-1844.	Penalty for operation without temporary permit—compliance bonds.

84-1801. (2381.11) Definitions. As used in this act, the following definitions shall apply:

(1) The term "gasoline" includes all products commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline, aviation gasoline and all flammable liquids, composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. The term "gasoline" does not include special fuels as defined in section 84-1831 (e).

(2) to (7). * * * [Same as parent volume.] ✓

(8) The words "aviation gasoline" mean gasoline or any other liquid fuel by whatsoever name such liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all such gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

History: En. Sec. 1, Ch. 19, L. 1927; amd. Sec. 1, Ch. 170, L. 1933; amd. Sec. 1, Ch. 116, L. 1935; amd. Sec. 1, Ch. 52, L. 1951; amd. Sec. 1, Ch. 17, L. 1955; amd. Sec. 3, Ch. 70, L. 1963.

Amendment

The 1963 amendment completely rewrote paragraph (1), for previous text of which see parent volume; and inserted in

paragraph (8) the words "or any other liquid fuel by whatsoever name such liquid fuel may be known or sold" and the words

"including but not limited to any and all such gasoline or liquid fuel."

84-1801.1. Gasoline license tax—amount—evaporation and other loss. Beginning January 16, 1958, every dealer (as defined in section 84-1801 of the Revised Codes of Montana, 1947, and acts amendatory) shall, when engaged in the business of producing, refining, manufacturing or compounding gasoline for sale or use, or importing gasoline into the state of Montana or purchasing gasoline within the state of Montana for sale or use; pay to the state board of equalization, a license tax for the privilege of engaging in and carrying on such business in this state, in an amount equal to six cents (6¢) for each gallon of gasoline (as defined in section 84-1801, subsections 1(a), 1(b) and subsection 8 of the Revised Codes of Montana, 1947 and acts amendatory) refined, manufactured, produced or impounded by such dealer, and distributed, used or sold by him in this state, or shipped, transported or imported by such dealer into and distributed, used or sold by him within this state, after it has arrived in and is brought to rest within this state, whether sold in the original packages or in broken packages; provided that all gasoline delivered by any dealer to any of his own service stations in this state shall be deemed to have been sold, and shall be treated and considered as sold, in computing such license tax, in the same manner as though the same had been sold to other persons. In making the computation of license tax due and in making payment thereof, two per cent (2%) of the amount of such tax shall be deducted by the dealer as an allowance for evaporation and other loss of gasoline handled by such dealer. No gasoline used or sold by such dealer, which was purchased by him from a dealer who has paid the tax thereon, shall be included or considered in determining the amount of such license tax to be paid by such dealer, and no gasoline exported by such dealer out of the state of Montana shall be included in the computation of any dealer's license tax herein provided for.

History: En. Sec. 1, Ch. 230, L. 1957.

Title of Act

An act relating to a license tax for gasoline dealers; providing that such license tax shall be seven cents on each gallon of gasoline sold or distributed; providing for a deduction from such tax for evaporation; providing for an effective date for such tax; repealing the license tax provided in section 10 of chapter 39, Laws of Montana, 1945, as amended; and providing an effective date of this act; and repealing all acts and parts of acts in conflict herewith.

Repealing Clauses

Section 2 of Ch. 230, Laws 1957 read "The license tax of seven cents (7¢) a gallon of gasoline on dealers or distributors, provided for in section 10 of chapter 39, Laws of Montana, 1945, as amended, shall be repealed from and after January 15, 1958."

Section 3 of Ch. 230, Laws 1957 re-

pealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 230, Laws 1957 provided the act should be in effect from and after January 15, 1958.

Interim Gasoline Tax

Section 84-1801.1 becomes effective from and after January 15, 1958. Until such date the gasoline tax is that established by section 10 of chapter 39, Laws 1945; amended by Sec. 1, Ch. 167, Laws 1949; amended by Sec. 1, Ch. 255, Laws 1955; amended by Sec. 1, Ch. 229, Laws 1957. Such acts are repealed by section 2 of Ch. 230, Laws 1957 from and after January 15, 1958. Chapter 229 of Laws 1957 reads as follows:

"An act to amend section 10, chapter 39, of the Laws of the Twenty-ninth Legislative Assembly of the state of Montana, 1945, as amended by chapter 255 of the Laws of the Thirty-fourth Legislative

Assembly of the state of Montana, 1955, relating to the license tax paid by gasoline dealers to the state board of equalization and fixing the amount thereof; providing for an effective date; and repealing all acts and parts of acts in conflict herewith.

"Section 1. That section 10 of chapter 39, of the Laws of the Twenty-ninth Legislative Assembly of the state of Montana, 1945, as amended by chapter 255 of the Laws of the Thirty-fourth Legislative Assembly of the state of Montana, 1955, be, and the same is hereby amended to read as follows:

"Section 10. For the purpose of providing funds for the payment of the interest upon the maturing principal of the state highway treasury anticipation debentures herein provided for, every dealer as referred to and defined in the gasoline license tax laws of the state of Montana now in effect, until the principal and interest of all debentures issued under the authority of this act shall have been paid, shall pay to the state board of equalization for deposit in the state treasury, a license tax for the privilege of engaging in and carrying on such business in this state, in an amount equal to seven cents (7¢) for each gallon of gasoline (as defined in section 84-1801, subsections 1 (a), 1 (b) and subsection 8 (2381.11), Revised Codes of Montana, 1947, (and acts amendatory), for the period commencing March 31, 1957 and ending January 15, 1958, refined,

manufactured, produced or impounded by such dealer, and distributed, used or sold by him in this state, or shipped, transported or imported by such dealer into and distributed, used or sold by him within this state, after it has arrived in and is brought to rest within this state, whether sold in the original packages or in broken packages; provided that all gasoline delivered by any dealer to any of his own service stations in this state shall be deemed to have been sold, and shall be treated and considered as sold, in computing such license tax, in the same manner as though the same had been sold to other persons. In making the computation of license tax due and in making payments thereof, two per cent (2%) of the amount of such tax shall be deducted by the dealer as an allowance for evaporation and other loss of gasoline handled by such dealer. No gasoline used or sold by such dealer, which was purchased by him from a dealer who has paid the tax thereon, shall be included or considered in determining the amount of such license tax to be paid by such dealer, and no gasoline exported by such dealer out of the state of Montana shall be included in the computation of any dealer's license tax herein provided for.

"Section 2. All acts or parts of acts in conflict herewith are hereby repealed.

"Section 3. This act shall be in full force and effect from and after March 31, 1957, to and through January 15, 1958."

84-1802. (2381.12) Dealers' statements—amount of tax—gasoline tax exemption certificates. (1) Each dealer shall, not later than the twenty-fifth (25th) day of each calendar month after this act has become effective, render a true statement to the state board of equalization, duly signed, of all gasoline handled by him in this state during the preceding calendar month, and containing such other information as the state board of equalization may require, and shall accompany such statement with the payment to the state board of equalization of license tax, in an amount equal to the lawful tax per gallon imposed by Section 1, of Chapter 230, the Laws of 1957, and acts amendatory, or such other lawful tax as may be imposed by law for each gallon of gasoline so handled, and upon which such license tax was not paid by any other dealer in this state, for engaging in and carrying on such business in this state. In making the computation of license tax due and in making payment thereof, two per centum (2%) of the amount of such tax shall be deducted by the dealer as an allowance for evaporation and other loss of gasoline handled by such dealer. The dealer may also deduct for each gallon of gasoline sold by him to any county, incorporated city or town, or school district of this state and for which he submits a valid gasoline tax exemption certificate, an amount equal to the tax per gallon. In addition a dealer may deduct for each gallon of aviation gasoline sold by him and for which he submits a valid aviation gasoline tax exemption certificate, an amount equal to

the tax per gallon except the portion thereof allocated to the state aeronautics commission by section 1-501.

Any dealer engaged in or carrying on his business at more than one (1) place or location in this state may include all such places of business in one statement.

(2) Any county, incorporated city or town, or any school district of this state may apply to the state board of equalization for a permit to issue governmental gasoline tax exemption certificates. The application for a permit, the permit itself, and any governmental exemption certificates issued pursuant thereto shall be in such form and shall contain such information as the board may from time to time require. The board may require the payment of a fee not to exceed five dollars (\$5.00) for each permit issued, and may provide that such permit shall be valid for a period not exceeding five (5) years. No permit shall be transferable. The permit shall be subject to revocation at any time by the board for any violation of law relating thereto and any false statement made by the holder in connection therewith.

So long as any governmental permit remains unrevoked, the holder thereof shall have the privilege to purchase gasoline from any seller without the payment of any part of the license tax, imposed by Section 1, Chapter 230, Laws of 1957, or any acts amendatory thereof, upon surrendering to the seller a governmental gasoline tax exemption certificate certifying that the gasoline is purchased for use directly by the governmental subdivision and not for resale. Any seller who sells gasoline either directly to the holder of such a permit and who receives a valid certificate directly from the permit holder covering the sale, or who sells to another seller who surrenders valid certificates held by him covering prior sales, shall be under no liability or obligation to collect or pay the tax on the number of gallons covered by such certificates.

All of the subdivisions of the state of Montana mentioned herein shall be subject to all the conditions, rules and regulations applicable to individuals, and as such subdivisions, can act only by their officer and agents in making application for permits and in issuing governmental gasoline tax exemption certificates, and they shall be responsible for and bound by the acts and declarations of such officers and agents.

(3) Any dealer at an established airport, who purchases aviation gasoline for resale directly to consumers using such gasoline in aircraft, or any consumer who purchases such gasoline in lots of not less than fifty (50) gallons for use in aircraft and not for resale and who purchases from a dealer other than at an established airport, may apply to the state board of equalization for a permit to issue aviation gasoline tax exemption certificates. The application for a permit, the permit itself, and any exemption certificates issued pursuant thereto shall all be in such form and shall contain such information as the board may from time to time require. The board may require the payment of a fee of not to exceed \$5.00 for each permit issued and may provide that said permits shall be valid for a period not exceeding five years. No permit shall be transferable. The permit shall be subject to revocation at any time by the

board for any violation of law relating thereto or any false statement made by the holder in connection therewith.

So long as his permit remains unrevoked, the holder thereof shall have the privilege to purchase aviation gasoline from any dealer without the payment of any part of the license tax, imposed by this section, except the part allocated to the state aeronautics commission, upon surrendering to the seller an aviation gasoline tax exemption certificate certifying, if the holder is a dealer at an established airport, that the gasoline purchased will be resold only to consumers for use directly in aircraft, and if the holder is a consumer purchasing from a dealer other than at an established airport and the purchase is fifty (50) gallons or more, that the gasoline is purchased for use directly in aircraft and not for resale; and any dealer who sells aviation gasoline either directly to the holder of such a permit and who receives a valid certificate directly from the permit holder covering that sale, or who sells to another dealer who surrenders valid certificates held by him covering prior sales, shall be under no liability or obligation to collect or pay the tax, on the number of gallons covered by such certificates, except the portion thereof allocated to the state aeronautics commission; but notwithstanding any other provision to the contrary, no tax exemption certificate shall be valid for any purpose nor entitle any dealer to the deduction authorized in subsection (1) of this section unless submitted to the board prior to the end of the second calendar month immediately succeeding the month in which the sale was made with respect to which such certificate issued.

History: En. Sec. 3, Ch. 19, L. 1927; amd. Sec. 4, Ch. 92, L. 1929; amd. Sec. 4, Ch. 6, L. 1931; amd. Sec. 1, Ch. 202, L. 1949; amd. Sec. 1, Ch. 217, L. 1953; amd. Sec. 2, Ch. 17, L. 1955; amd. Sec. 1, Ch. 64, L. 1963; amd. Sec. 4, Ch. 70, L. 1963; amd. Sec. 214, Ch. 147, L. 1963.

Compiler's Note

This section was amended three times in 1963, once by Ch. 64, once by Ch. 70, and once by Ch. 147. None of the amendatory acts mentioned nor included the changes made by either of the others. Since the amendments do not appear to conflict, however, the compiler has made a composite section incorporating all three amendments.

Amendments

Chapter 64, Laws 1963 substituted the reference in subsection (1) to section 1, Chapter 230, Laws of 1957 for a reference to section 10, Chapter 39, Laws of 1945; inserted the third sentence in subsection (1); inserted a new subsection (2); and redesignated former subsection (2) as (3).

Chapter 70, Laws 1963, deleted the words "and sworn to" which followed "duly signed" near the beginning of subsection (1); and made minor changes in phraseology and punctuation.

Chapter 147, Laws 1963, substituted "state aeronautics commission" for "state aviation fund" near the end of the first paragraph of subsection (1) and two places in the second paragraph of former subsection (2) (now subsection (3)).

84-1802.1. Payment or credit of gasoline tax in event of change in rate of said tax. In the event of an increase in the rate of tax imposed by the state of Montana upon gasoline, each dealer shall pay over to the board of equalization, in the manner herein provided, such additional amount of tax upon all gasoline in storage or in transit on the date of such increase in the rate of tax upon gasoline. In the event of a decrease in the rate of tax imposed upon gasoline, each dealer who shall have previously paid the greater tax shall be entitled to a credit or setoff for the amount of such differential in the rate of tax on gasoline in storage or in transit on the date of such decrease in the rate of tax. Said payment of tax or credit and

setoff of tax shall be transmitted to the board of equalization within forty-five (45) days of such increase or decrease in the rate of tax upon gasoline, and shall be accompanied by an affidavit of said dealer containing a true and correct inventory of gasoline in storage or in transit on the date of increase or decrease in the rate of tax imposed on gasoline, except that a credit or setoff of tax shall be allowed in the manner provided herein on gasoline in storage or in transit on January 16, 1958, if the same be filed with the board of equalization within forty-five (45) days from and after the effective date of this act. The state board of equalization shall have the power to audit the records necessary to determine the validity of any claim.

History: En. 84-1802.1 by Sec. 1, Ch. 175, L. 1959.

Title of Act

An act to amend Chapter 18, Title 84 of the Revised Codes of Montana, 1947, by adding thereto a new section to be numbered 84-1802.1, and providing for the payment or the credit and setoff of the tax upon gasoline in storage on the date

of increase or decrease in the rate of tax imposed on gasoline, providing that power to determine the validity of such claims shall rest in the state board of equalization; and containing a repealing clause.

Repealing Clause

Section 2 of Ch. 175, Laws 1959 repealed all acts and parts of acts in conflict therewith.

84-1803.1. Enforcement powers of board. (a) Rules and regulations: The board shall enforce the provisions of this act, and may prescribe, adopt and enforce reasonable rules and regulations relating to the administration and enforcement thereof. (b) Examination of records: The board, or its authorized representative is hereby empowered to examine the books, papers, records and equipment of any gasoline dealer or any person dealing in, transporting, or storing gasoline as defined in this act and to investigate the character of the disposition which any person makes of such gasoline in order to ascertain and determine whether all excise taxes due hereunder are being properly reported and paid. If such books, papers, records and equipment are not maintained in this state at the time of demand they shall be furnished to the board for review or such dealer shall bear the reasonable cost of examination by an agent authorized or designated by the board at the place where such books or records are kept, provided the taxpayer shall not be liable for such costs for a period exceeding one (1) week or for such longer period as he may consent to in writing, unless the result of such examination is the payment of a tax deficiency.

History: En. Sec. 2, Ch. 70, L. 1963.

Compiler's Note

The title to Chapter 70, Laws of 1963, indicates that this section is intended to apply to Chapter 18 of Title 84, R. C. M. 1947. However, the body of the act does not specifically so indicate. The title to Chapter 70, Laws of 1963, read as follows:

"An act providing that under Chapter 18 of Title 84, R. C. M. 1947, the date of mailing is deemed the date of filing of reports, notices, payments or claims for refunds; providing that the state board of equalization establish rules and regulations and authorizing the state board of equalization to examine records of gasoline dealers."

84-1805.1. Records maintained by local governmental agencies issuing exemption certificates. Each county, incorporated city or town, or school district of this state which is the holder of a permit to issue governmental gasoline tax exemption certificates, shall keep a record in such form as

the state board of equalization shall require, showing the total number of gallons of gasoline purchased by the permit holder and such other information as the state board of equalization may require.

History: En. Sec. 2, Ch. 64, L. 1963.

84-1807. (2381.17) Procedure in case of failure to file statement or pay tax—lien of tax. If any dealer or other person subject to the payment of such license tax shall fail, neglect, or refuse to make any statement required by this act, or shall fail to make payment of such license tax within the time herein provided, the state board of equalization shall, immediately after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such statement and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of the license tax due the state from such delinquent dealer and shall add thereto a penalty of five per cent (5%) thereof for the first failure, neglect or refusal; ten per cent (10%) for the second; fifteen per cent (15%) for the third; and twenty-five per cent (25%) for the fourth, and each subsequent failure, neglect and refusal, which shall be in addition to the ten per cent (10%) penalty hereinbefore provided for non-payment of such license tax within the time herein provided. Said license tax and the penalties added thereto shall bear interest at the rate of one per cent (1%) per month from the date such statements should have been made and said license tax paid. The state treasurer of the state of Montana shall then proceed to collect such license tax with penalties and interest. Upon the request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect such license tax. All license taxes due from any dealer under the provisions of this act, together with all penalties and interest thereon, shall be a lien upon any and all property of such dealer or other person upon the filing by the state board of equalization of a duplicate copy of the statement so made by the state board of equalization, or a certified copy of any statement filed with said board in the office of the county clerk of the county where such property is situated which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law. No action shall be maintained to enjoin the collection of such license tax or any part thereof. When the amount due the state is paid in full and before the entry of foreclosure decree, the state treasurer shall release the said lien by filing in the office of the county clerk wherein is filed the said lien, a written release thereof. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the state treasurer may release from the operation of said lien a part of said property to enable the dealer to mortgage, sell or otherwise dispose of the same in order to procure funds with which to pay said taxes, penalty and interest, provided there remains in the judgment of the state treasurer, sufficient property subject to said lien to insure the payment of the whole of said unpaid taxes, penalty and interest.

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History: En. Sec. 8, Ch. 19, L. 1927; amd. Sec. 1, Ch. 175, L. 1929; amd. Sec. 5, Ch. 70, L. 1963.

Amendment

The 1963 amendment substituted "judgment liens" for "other liens" near the end of the fifth sentence; and made a minor change in punctuation.

84-1809. (2381.19) Invoice of dealers. Each dealer in this state handling any gasoline as defined in this act, shall, at the time of such handling, make out and deliver to the purchaser or consignee thereof an invoice in which shall be stated the number of gallons of gasoline covered by such invoice and such other information as the state board of equalization may require.

History: En. Sec. 10, Ch. 19, L. 1927; amd. Sec. 6, Ch. 70, L. 1963.

Amendment

The 1963 amendment substituted "such other information as the state board of

equalization may require" at the end of the section for "that the license tax on same has been paid or will be paid to the treasurer of the state of Montana within fifteen (15) days after the current month, as provided in this act."

84-1812(1). (2381.22) Distribution and use of proceeds of tax. All money received by the state treasurer in payment of license taxes under the provisions of this act except that amount paid out of the state board of equalization's suspense account for gasoline tax refund shall be used and expended by the state highway commission on the federal highway system of highways in this state selected and designated under the provisions of the federal aid act, approved July 11, 1916, and the federal highway act, approved November 9, 1921, and all amendments thereto, and on highways leading from each county seat in the state to said federal highway system of federal aid roads where such county seat is not on said system, and on such other roads as have been or may be authorized by the laws of Montana, for the collection and enforcement of this act, pursuant to the provisions of article XII, section 1 (b) of the constitution of the state of Montana; provided, that the total cost to the state for administration, dissemination of public information, and engineering on the federal aid work contemplated by this act shall not exceed for any fiscal year eight per centum (8%) of the total of state, federal aid and other available funds expended under the supervision of the state highway commission. Provided further that the expenditure for dissemination of public information shall not exceed an annual expenditure of one hundred and twenty-six thousand five hundred dollars (\$126,500.00). It shall be the duty of the state highway commission, in expending such money, to carry forward construction from year to year, using the money expended through the matching up of federal aid allotments to Montana upon the said federal highway system of highways in the various parts of the state in accordance with the provisions of section 84-1817; provided that nothing in this act shall be construed to conflict with said federal aid highway acts and the rules by which they are administered. The state highway commission is authorized to enter into co-operative agreements with the national park service and the bureau of public roads for the purpose of maintaining national park approach roads in Montana.

History: En. Sec. 13, Ch. 19, L. 1927; amd. Sec. 1, Ch. 178, L. 1929; amd. Sec. 1, Ch. 231, L. 1953; amd. Sec. 1, Ch. 206, L. 1957; amd. Sec. 1, Ch. 42 L. 1961; amd. Sec. 5, Ch. 126, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 126 and once by Ch. 223. Neither amendatory act mentioned nor included the changes made by the other. Because there is possible conflict between the two amendments, the compiler has set out both in full. The text above is section 84-1812(1) as amended by Ch. 126, Laws 1963. The section, as amended by Ch. 223, is set out as 84-1812(2) herein.

Amendments

The 1957 amendment deleted from the third paragraph a proviso which read "Provided further that the expenditure for dissemination of public information shall not exceed three and one-half per cent (3½%) not to exceed an annual expenditure of sixty-five thousand dollars (\$65,000.00) of the above mentioned administrative fund; provided, however, that said expenditures for the dissemination of public information shall terminate June 30, 1955" and substituted as the second proviso to the third paragraph the following: "Provided further that the expenditure for dissemination of public information shall not exceed an annual expenditure of eighty-five thousand dollars (\$85,000.00)."

The 1961 amendment deleted clause designations "(a)" and "(b)" which preceded "seventy-five per centum" and "twenty-five per centum," respectively, in the first paragraph; inserted "as follows:" in the first paragraph; inserted "of the total amount collected" after "seventy-five per centum (75%)" and after "twenty-five per centum (25%)" in the first paragraph; substituted "The amount deposited" for "All money so collected and deposited" at the beginning of the second paragraph; substituted "refunds and paying drawbacks as authorized" for "such refunds and paying such drawbacks as are authorized" in the first sentence of the second paragraph; made separate second and third sentences out of two former provisos in the second paragraph; substituted "In the event, however" for "if at any time" at the beginning of the present third sentence of the second paragraph; inserted "at any time" after "insufficient in amount" in the present third sentence of the second paragraph; inserted "notwithstanding the proportions hereinbefore set out" after "state treasurer" in the third sentence of the second paragraph; deleted the words "so collected and deposited or" after "All money" at the beginning of the third paragraph; substituted "the" for "said" before "state highway fund" near the beginning of the third paragraph; deleted the words "in the construction, reconstruction, betterment, maintenance, ad-

ministration, dissemination of public information, hereby determined to be a proper administrative expense, and engineering" before "on the federal highway system" near the beginning of the third paragraph; substituted "on highways leading from each county seat" for "for the purpose of construction, reconstruction, betterment, maintenance, administration, dissemination of public information hereby determined to be a proper administrative expense and engineering of highways leading from each county seat" in the third paragraph; substituted "on such other roads" for "for the purpose of construction, reconstruction, betterment, maintenance, administration, dissemination of public information, hereby determined to be a proper administrative expense, and engineering of such other roads" in the third paragraph; inserted the words "pursuant to the provisions of article XII, section 1 (b) of the constitution of the state of Montana" immediately before the first proviso in the third paragraph; substituted "for" for "of" before "administration" in the first proviso in the third paragraph; substituted "which" for "and" at the beginning of the final clause in the first proviso in the third paragraph; inserted the words "out of said administrative fund" in the second proviso in the third paragraph; increased the amount specified in the second proviso in the third paragraph from \$85,000 to \$126,500; and added the last two sentences to the third paragraph.

The 1963 amendment substituted the words "except that amount paid out of the state board of equalization's suspense account for gasoline tax refund" for the words "shall be deposited and credited as follows: seventy-five per centum (75%) of the total amount collected to the state highway fund, and twenty-five per centum (25%) of the total amount collected to a special fund designated as "the gasoline license drawback fund" following the words "provisions of this act" near the beginning of the section, at the end of the former first paragraph; deleted a former second paragraph which read: "The amount deposited in the gasoline license tax drawback fund shall be used for the purpose of making refunds and paying drawbacks as authorized by law to be made or paid to purchasers of gasoline used in this state for other purposes than the propulsion of motor vehicles over the public highways and streets of this state. At the close of each fiscal year, the state treasurer shall transfer all money remaining unexpended in said gasoline license tax drawback fund to the state highway fund. In the event, however, the money in said gasoline license tax drawback fund is in-

sufficient in amount at any time to pay duly authorized and approved refunds or drawbacks, the state treasurer notwithstanding the proportions hereinbefore set out shall transfer from the state highway fund a sum or sums sufficient in amount to meet and pay all such outstanding authorized and duly approved refunds or drawbacks" deleted the words "All money transferred to the state highway fund" at the beginning of the former third paragraph; combined the former first and third paragraphs; deleted "which said eight per centum (8%) shall be known as the administrative fund" at the end of the former first sentence of the third para-

graph, now the first sentence of the section; and deleted "out of said administrative fund" after "dissemination of public information" in the second proviso, formerly the second proviso to the third paragraph.

Repealing Clauses

Section 2 of Ch. 42, Laws 1961 read "That section 84-1816 of the Revised Codes of Montana, 1947, be, and the same is hereby repealed."

Section 3 of Ch. 42, Laws 1961 repealed all acts and parts of acts in conflict therewith.

84-1812(2). (2381.22) Distribution and use of proceeds of tax—funds.

All money received by the state treasurer in payment of license taxes under the provisions of this act shall be deposited and one per centum (1%) of the total amount collected shall be credited to the state park fund and the balance deposited and credited as follows:

- (a) Seventy-five per centum (75%) to the state highway fund.
- (b) Twenty-five per centum (25%) to a special fund designated as "the gasoline license drawback fund."

The amount deposited and credited to the state park fund shall be used by the state highway commission for the creation, improvement, and maintenance of state parks wherein motor boating is allowed.

The amount deposited in the gasoline license tax drawback fund shall be used for the purpose of making refunds and paying drawbacks as authorized by law to be made or paid to purchasers of gasoline used in this state for other purposes than the propulsion of motor vehicles over the public highways and streets of this state. At the close of each fiscal year, the state treasurer shall transfer all money remaining unexpended in said gasoline license tax drawback fund to the state highway fund. In the event, however, the money in said gasoline license tax drawback fund is insufficient in amount at any time to pay duly authorized and approved refunds or drawbacks, the state treasurer notwithstanding the proportions hereinbefore set out shall transfer from the state highway fund a sum or sums sufficient in amount to meet and pay all such outstanding authorized and duly approved refunds or drawbacks.

All money transferred to the state highway fund shall be used and expended by the state highway commission on the federal highway system of highways in this state selected and designated under the provisions of the federal aid act, approved July 11, 1916, and the federal highway act, approved November 9, 1921, and all amendments thereto, and on highways leading from each county seat in the state to said federal highway system of federal aid roads where such county seat is not on said system, and on such other roads as have been or may be authorized by the laws of Montana, for the collection and enforcement of this act, pursuant to the provisions of article XII, section 1 (b) of the constitution of the state of Montana; provided, that the total cost to the state for administration, dissemination of public information, and engineering on

the federal aid work contemplated by this act shall not exceed for any fiscal year eight per centum (8%) of the total of state, federal aid and other available funds expended under the supervision of the state highway commission, which said eight per centum (8%) shall be known as the administrative fund. Provided further that the expenditure for dissemination of public information out of said administrative fund shall not exceed an annual expenditure of one hundred and twenty-six thousand five hundred dollars (\$126,500). It shall be the duty of the state highway commission, in expending such money, to carry forward construction from year to year, using the money expended through the matching up of federal aid allotments to Montana upon the said federal highway system of highways in the various parts of the state in accordance with the provisions of section 84-1817; provided that nothing in this act shall be construed to conflict with said federal aid highway acts and the rules by which they are administered. The state highway commission is authorized to enter into co-operative agreements with the national park service and the bureau of public roads for the purpose of maintaining national park approach roads in Montana.

The legislature hereby finds as a fact that of all the fuel sold in the state of Montana for consumption in internal combustion engines, not less than one per centum (1%) of this fuel is used for purposes of propelling boats on waterways of this state.

History: En. Sec. 13, Ch. 19, L. 1927; amd. Sec. 1, Ch. 178, L. 1929; amd. Sec. 1, Ch. 231, L. 1953; amd. Sec. 1, Ch. 206, L. 1957; amd. Sec. 1, Ch. 42, L. 1961; amd. Sec. 1, Ch. 223, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 126 and once by Ch. 223. Neither amendatory act mentioned nor included the changes made by the other. Because there is possible conflict between the two amendments, the compiler has set out both in full. The text above is section 84-1812(2) as amended by Ch. 223, Laws 1963. The section, as amended by Ch. 126, is set out as 84-1812(1) herein.

Amendments

For effect of 1957 and 1961 amendments, see amendment notes following section 84-1812(1).

The 1963 amendment inserted in the first paragraph the words "deposited and one per centum (1%) of the total amount collected shall be credited to the state park fund and the balance"; inserted the designations for clauses (a) and (b) of the first paragraph; deleted the words "of the total amount collected" which followed the percentages in clauses (a) and (b) of the first paragraph; inserted the second paragraph (pertaining to use of the state park fund); and added the last paragraph.

84-1813. (2381.23) Tax to be collected on motor fuel, when. The state board of equalization shall, under the provisions of rules and regulations issued by said board, collect or cause to be collected, from the owners or operators of motor vehicles a tax in an amount equal to nine cents (9¢) for each gallon of diesel fuel or other volatile liquid, of less than forty-six degrees (46°) A. P. I. (American Petroleum Institute) gravity test, when actually sold or used to produce motor power to propel motor vehicles upon the public highways or streets within the state of Montana, or used in motor vehicles, motorized equipment and the internal combustion of any and all engines including stationary engines used in connection with any and all work performed under any and all contracts pertaining to the construction, reconstruction or improvement of any highway or street and their appurtenances awarded by any and all public

agencies, including federal, state, county, municipalities, or other political subdivision.

History: En. Sec. 2, Ch. 116, L. 1935; amd. Sec. 1, Ch. 210, L. 1955; amd. Sec. 1, Ch. 73, L. 1963.

Amendment

The 1963 amendment inserted "or cause

to be collected" near the beginning of the section; and added to the end of the section the clauses beginning "or used in motor vehicles, motorized equipment and the internal combustion."

84-1816. (2396.2) Repealed.

Repeal

This section (Sec. 2, Ch. 18, L. 1927; Sec. 1, Ch. 74, L. 1945; Sec. 1, Ch. 264, L. 1947; Sec. 1, Ch. 212, L. 1953; Sec. 1, Ch. 241, L. 1953; Sec. 1, Ch. 88, L.

1955; Sec. 2, Ch. 206, L. 1957), relating to use of state highway funds on the federal highway system, was repealed by Sec. 2, Ch. 42, Laws 1961.

84-1817. (2396.3) Distribution of state highway construction funds.

(1) Allotment of state construction funds for federal aid highway systems. At the start of the fiscal year beginning July 1, 1957, and at the beginning of each fiscal year thereafter, the state highway commission shall allot available state construction moneys to the federal aid interstate highway system, the federal aid primary highway system, the federal aid secondary highway system and the federal aid urban highway system in proportion to the amounts necessary to match the respective amounts of federal aid available for expenditure on these systems at the beginning of each fiscal year.

(2) Apportionment of state construction moneys to the federal aid primary highway system. At the start of the fiscal year beginning July 1, 1953, and at the beginning of each fiscal year thereafter, the state highway commission shall compute from its records the percentage of incompleting mileage of the federal aid primary highway system within each of said districts which each district respectively bears to the total incompleting mileage of said federal aid primary highway system within this state at that time, and the actual respective percentages of incompleting mileage in each district as so computed and determined at the beginning of each fiscal year shall be used in apportioning construction moneys for that year to each of the said financial districts from the state highway fund as defined and provided by section 84-1816. As a basis for the determination of the amount of incompleting mileage of said federal aid primary highway system in this state for each fiscal year, the state highway commission shall adopt as the criterion the current definition, as prescribed by the bureau of public roads, for a fully and adequately completed federal highway in this state. This criterion shall be considered as a one hundred per cent (100%) completed federal highway; and federal highway mileage which is only partially completed under the application of this criterion, shall be considered as only partially completed on a percentage basis, this to be determined from the relative estimated percentage costs of construction already performed and of additional construction which must be performed to bring said mileage up to the standard of said criterion.

(3) Apportionment of state construction moneys to the federal aid secondary highway system. At the start of the fiscal year beginning July

1, 1953, and at the beginning of each fiscal year thereafter, state construction moneys for the federal aid secondary highway system shall be apportioned to each of the financial districts as defined in section 84-1815, on a percentage basis as determined in the following manner: One-fourth ($\frac{1}{4}$) in the ratio of land area in each financial district to the total land area in the state; one-fourth ($\frac{1}{4}$) in the ratio of the rural population in each financial district to the total rural population in the state; and one-fourth ($\frac{1}{4}$) in the ratio of the rural road mileage in each financial district to the total rural road mileage in the state; one-fourth ($\frac{1}{4}$) in the ratio of value of rural lands in each financial district to the total value of rural land in the state. Said moneys to be further apportioned to the counties within each financial district in the same ratio of land area, rural population and rural road mileage; and value of rural lands, provided, that to the extent necessary to permit orderly programming and construction of projects, expenditures of construction money in any county may exceed the amount apportioned to that county with the provision that such excess expenditure shall not exceed three (3) times the amount of the last annual apportionment to that county and that any excess expenditures shall be deducted from future apportionments to that county.

For the purposes of this section, rural population is defined as total population less the population in cities over five thousand (5,000) persons and their unincorporated fringe urban areas as reported in the federal census. Decennial census figures for population shall be adjusted during the interim between censuses in accordance with the percentage of change occurring in annual motor vehicle registration figures for each county.

For the purposes of this section, rural road mileage is defined as all road mileage outside incorporated cities, exclusive of road mileage on the federal aid rural primary highway system. Rural road mileage figures reported by the road inventory of the state highway commission shall be used in determining rural road mileage as defined in this section.

For the purposes of this section, the value of rural lands, shall include the value of state owned lands from which the state derives grazing, timber and agricultural income.

The basis for the value of rural lands shall be computed from the figures in the latest biennial report of the Montana state board of equalization. The basis for the value of state owned lands shall be computed from the latest figures on the total grazing, timber and agricultural lands in each county, submitted by the commissioner of state lands and investments in his latest biennial report. The average value of privately owned lands shall be the average value of the state owned lands, if the actual values are not available.

(4) Apportionment of state construction moneys to the federal aid urban highway system. At the start of the fiscal year beginning July 1, 1953, and at the beginning of each fiscal year thereafter, state construction moneys for the federal aid urban highway system shall be apportioned to the cities in the state over five thousand (5,000) population in the ratio of urban population in each city to the total urban population in the state for all cities over five thousand (5,000) population.

For the purpose of this section, urban population is defined as population within the incorporated limits of cities over five thousand (5,000) population and also the population within unincorporated urban fringe areas as delineated and reported in the federal census.

To the extent necessary to permit orderly programming and construction of projects, expenditures of construction money in any urban city may exceed the amount apportioned to that city with the provision that such excess expenditures shall be deducted from future apportionments to that city.

(5) Apportionment of state construction moneys to the federal aid interstate highway system. At the start of the fiscal year beginning July 1, 1957, and at the beginning of each fiscal year thereafter, state construction moneys for the federal aid interstate highway system shall be apportioned to each of the financial districts, as defined in section 84-1815, Revised Codes of Montana, 1947, in proportion to the estimated cost of constructing or reconstructing the system in each district as compared with the total estimated cost of constructing or reconstructing the entire system within the state. The cost estimates to be used for apportioning said state construction funds shall be those costs developed by the state highway commission in accordance with the provisions of subsection (d) of section 108 of title I of the federal aid highway act of 1956.

(6) The state highway commission may vary the expenditures made in any financial district under the provisions of this act to the extent of fifteen per cent (15%) above the amount of money allocated to such district in any year for the federal aid primary highway system or the federal aid secondary highway system, and to the extent of one hundred per cent (100%) above the amount of money allocated to such district in any year for the federal aid interstate highway system, provided that the allocation of construction money to such district for the next succeeding fiscal year shall be decreased by an amount equal to such increased expenditures.

History: En. Sec. 3, Ch. 18, L. 1927; amd. Sec. 1, Ch. 102, L. 1937; amd. Sec. 1, Ch. 213, L. 1939; amd. Sec. 1, Ch. 175, L. 1943; amd. Sec. 1, Ch. 87, L. 1945; amd. Sec. 1, Ch. 240, L. 1953; amd. Sec. 1, Ch. 113, L. 1957; amd. Sec. 1, Ch. 133, L. 1959.

Compiler's Note

Section 84-1816, referred to in subd. (1), was repealed by Sec. 2, Ch. 42, Laws 1961.

Amendments

The 1957 amendment in subd. (1) substituted "July 1, 1957" for "July 1, 1953," inserted the words "the federal aid interstate highway system" and substituted the words "available for expenditure on these systems at the beginning of each fiscal year" for the words "apportioned to these systems" which appeared at the end of said subd. (1); added a new subd. (5);

renumbered former subd. (5) as subd. (6) and in subd. 6 inserted the words "for the federal aid primary highway system or the federal aid secondary highway system, and to the extent of one hundred per cent (100%) above the amount of money allocated to such district in any year for the federal aid interstate highway system."

The 1959 amendment added the fourth and fifth paragraphs to subd. (3) and in the third paragraph of subd. (4) deleted the words "expenditures of construction of projects" which appeared after the word "projects."

Repealing Clauses

Section 2 of Ch. 113, Laws 1957 and Sec. 2 of Ch. 133, Laws 1959 repealed all acts and parts of acts in conflict therewith.

84-1818. (2396.4) Refund of gasoline license tax—procedure. (1)

Any person who shall purchase and use any gasoline, with reference to which there has been paid into the treasury of the state of Montana, under the laws of this state licensing dealers in gasoline, a state gallonage tax, for the purpose of operating or propelling stationary gas engines, tractors used for purposes other than on the public highways or streets of this state, aeroplanes or aircraft, or for cleaning or dyeing, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state, and who has paid said tax either directly to the state of Montana or indirectly as a part of the purchase price of said gasoline, shall be allowed and paid as a refund or drawback an amount of money equal to the unit state gallonage tax, multiplied by the number of gallons of gasoline so purchased and used, provided that counties, incorporated cities, towns and school districts of this state shall be exempt from the payment of said tax by any such county, city, town or school district upon gasoline used by it in the performance of any of its governmental and proprietary functions, or either, imposed or authorized by law, including construction, maintenance and repair of all roads, highways and public places within the county limits and all streets, avenues, alleys and other public places within the corporate limits of such city or town and such exemption from payment of tax shall be allowed at the time of sale when purchaser furnishes to the seller a valid exemption certificate on a form approved by the state board of equalization; provided, that such refund or drawback shall in no instance exceed the total amount of the tax paid or to be paid, to the state of Montana, upon presenting to the board of equalization of the state of Montana, within the time allowed by law, a written statement, accompanied by the invoice or invoices issued to the claimant at the time of purchase and delivery of such gasoline showing such purchase and use, which statement shall set forth in words and figures, the total amount of the gasoline so purchased, and the purpose for which the same was actually used, the amount of the tax and such additional information as may be required by said board on forms to be furnished by them; each separate delivery shall constitute a purchase for the purpose hereof.

(2) All such applications for refunds or drawbacks shall be filed with the board of equalization of the state of Montana within twelve (12) months after the date on which such gasoline was purchased as shown by such invoices. The said board shall have one hundred twenty (120) days thereafter within which to make such investigation as it may desire, to ascertain the truths of the statements made. If the statement is found to be correct and is approved by said board a warrant shall be drawn upon the state treasurer for the amount of such claim and same shall be paid in the same manner as other claims against the state are paid. Such refund or drawbacks shall be made only to, and on the application of, the actual purchaser and user of the gasoline upon which refund is claimed and the burden of establishing the validity of the claim rests upon the claimant.

(3) Should the board of equalization, after investigation, find that the statement so made by said consumer contains errors which, in the

opinion of the board were not inserted for the purpose of fraud, it may correct the statement and approve the same as corrected whereupon warrant shall issue, or the board may, in its discretion, require the claimant to file an amended statement before action is taken thereon. If, upon investigation, it shall be determined by the state board of equalization that any claim has been fraudulently presented or is supported, as to any item therein by invoice or invoices fraudulently made or altered in any manner, or that any statement in the claim contained or the affidavit thereto, is willfully false in any particular and so made for the purpose of misleading said board, the board may reject such claim in toto.

(4) Any person desiring to claim refund on gasoline purchased shall obtain from the state board of equalization a permit by application therefor, on such form as the board shall prescribe, which application shall be made under oath and shall contain, among other things, the name, address and occupation of the applicant, the nature of the business, and a sufficient description for identification of the machines or equipment in which the taxable motor fuel is to be used for which refund may be claimed under such permit.

(5) Each permit issued shall bear a permit number and each claim filed shall bear the permit number of the claimant. It shall be the duty of the state board of equalization to keep a record of all permits issued and a cumulative record of refund claimed and paid thereunder.

A fee of one dollar (\$1.00) shall be collected from each person to whom a refund permit is issued after July 1, 1953. No refund shall be paid to any person after July 1, 1953, unless said person has first secured a refund permit and paid said fee. The refund permit must be renewed and the license fee paid every five years from the date of issuance.

(6) Whenever a claim shall be rejected, as herein provided, the state board of equalization may suspend the claimant's permit, for a period not exceeding one year, and no claim shall thereafter be approved or allowed for refund on any gasoline purchased by such claimant during such period of suspension.

(7) When gasoline is sold and delivered to a person who shall claim to be entitled to a refund with respect to the tax imposed, the seller of such gasoline shall make and deliver at the time of such sale and delivery separate invoices for each purchase on invoice forms approved by the state board of equalization showing the name and address of the seller and the name and address of the purchaser, the number of gallons of gasoline so sold in words and figures and the date of such purchase, and whether an aviation gasoline tax exemption certificate has been issued with respect to such sale, which invoice, attached to the claim presented shall be the only proof upon which a legal claim can be made for a refund based upon such purchase, and no refund shall be allowed on any sale with respect to which an aviation gasoline tax exemption certificate has been issued; provided, however, that in case the separate invoice delivered to the purchaser at the time of sale be either lost or destroyed he may make claim to the board of equalization for such refund, supporting the same by affidavit reciting the circumstances of such loss or destruction and produce such other evidence as may be required by the

board including an actual duplicate carbon copy of the original invoice or invoices. If the board be satisfied as to the sufficiency of the claim and supporting evidence, proper refund shall be made six (6) months thereafter. Except where surrendered to the purchaser for such purpose, the seller shall retain the duplicate original invoices for the period of one year from and after the date of issuance, during which period they shall be open to inspection by the state board of equalization and its agents. Such invoices shall be legibly written and shall be void if any corrections or erasures appear on the face thereof. The seller shall, in filling out invoices, use double-faced carbons.

(8) Upon the effective date of this act, each seller of such gasoline upon which a refund may be claimed by the purchaser, shall obtain a permit from the state board of equalization to sell such gasoline upon application therefor to the board, upon such form as the board shall prescribe, which application shall be made under oath and shall contain among other things, the name and address of the applicant, the place or places of his or its business within the state of Montana. Such permit issued shall bear a permit number and the date of issuance. It shall be the duty of the state board of equalization to keep a record of all such permits issued to sellers, and the suspension or cancellation of any thereof. Such permits shall be issued for the calendar year upon payment of a fee of one dollar (\$1.00). Such permit must be renewed annually on or before the first day of January, 1956, and each year thereafter, upon such application and fee paid. After the effective date of this act, it shall be unlawful for any person, firm, corporation or association to sell such gasoline upon which a refund may be claimed without a valid permit therefor. If any such person, firm, corporation or association shall sell any such gasoline without being the holder of a valid permit therefor, he shall be punished by a fine of not less than twenty-five dollars (\$25.00), or more than two hundred dollars (\$200.00), or be imprisoned in the county jail for a period of not less than ten days (10) nor more than sixty (60) days, or by both such fine and imprisonment.

History: En. Sec. 1, Ch. 17, L. 1927; amd. Sec. 1, Ch. 168, L. 1929; amd. Sec. 1, Ch. 175, L. 1931; amd. Sec. 1, Ch. 96, L. 1937; amd. Sec. 1, Ch. 67, L. 1939; amd. Sec. 1, Ch. 130, L. 1947; amd. Sec. 1, Ch. 168, L. 1949; amd. Sec. 1, Ch. 198, L. 1949; amd. Sec. 1, Ch. 221, L. 1953; amd. Sec. 3, Ch. 17, L. 1955; amd. Sec. 1, Ch. 212, L. 1955; amd. Sec. 1, Ch. 17, L. 1963; amd. Sec. 3, Ch. 64, L. 1963; amd. Sec. 6, Ch. 126, L. 1963; amd. Sec. 1, Ch. 224, L. 1963.

Compiler's Note

This section was amended four times in 1963, by Ch. 17, by Ch. 64, by Ch. 126, and by Ch. 224. Chapter 224 incorporated the change made by Ch. 17; but, except for this, none of the amendatory acts mentioned nor included the changes made by any of the others. Since the amendments do not appear to conflict, however, the compiler has made a composite section incorporating all four amendments.

Amendments

Chapter 17, Laws 1963, extended the filing period provided by the first sentence of subd. (2) from eight to twelve months.

Chapter 64, Laws 1963, substituted "exempt from the payment" for "entitled to said refund or drawback" before "of said tax" in the first proviso in subsection (1) (pertaining to counties, etc.); added at the end of said proviso the words "and such exemption from payment of tax shall be allowed at the time of sale when purchaser furnishes to the seller a valid exemption certificate on a form approved by the state board of equalization"; deleted a former subsection (7), for text of which see parent volume; and redesignated former subsections (8) and (9), respectively, as (7) and (8).

Chapter 126, Laws 1963, deleted "and the state board of examiners" after "approved by said board" in the third sentence of subsection (2); substituted "a war-

rant shall be drawn" for "the state auditor shall draw his warrant" in the third sentence of subsection (2); deleted "out of the gasoline license tax drawback fund" after "shall be paid" in the third sentence of subsection (2); and deleted "after approval by the state board of examiners, as above provided" after "warrant shall issue" in the first sentence of subsection (3).

Chapter 224, Laws 1963, deleted "motor boats" which preceded "aeroplanes or aircraft" in subsection (1); and repeated the amendment made by Ch. 17, Laws 1963.

Gasoline Lost—Refund

Since there has been no amendment to this law expressing disapproval of an earlier supreme court decision that gasoline lost or destroyed should be included

in the provision for a refund of the tax paid, the legislature in effect approved the interpretation. State ex rel. Roeder v. State Board of Equalization, 133 M 393, 324 P 2d 1057, 1061.

Where gasoline was lost during a flood which tipped over storage tank, the purchaser was entitled to a refund of the tax paid. State ex rel. Roeder v. State Board of Equalization, 133 M 393, 324 P 2d 1057, 1061.

Where it has been decided that a claimant is entitled to a refund but the claim is such that it cannot be regularly itemized on prescribed forms, the board cannot set up the failure to comply with technical regulations as a reason for denying the claim. State ex rel. Roeder v. State Board of Equalization, 133 M 393, 324 P 2d 1057, 1061.

84-1818.1. Date of mailing deemed date of filing or receipt—timely mailing bars penalties and tolls—statutory time limitations. When any application, report, notice, payment or claim for credit or refund to be filed with or made to any officer, agent, or employee of the state under the provisions of this chapter has been deposited in the United States mail, addressed to such officer, agent or employee, it shall be deemed filed or received on the date shown by the postoffice cancellation mark on the envelope containing it, or on the date it was mailed, if proved to the satisfaction of said officer, agent or employee of the state, establishes that the actual mailing occurred on an earlier date; provided, however, that no penalty for delinquency shall attach, nor will the statutory period be deemed to have elapsed in the case of credit or refund claims, if it is established by competent evidence that such application, report, notice, payment, or claim for credit or refund was timely deposited in the United States mail, properly addressed to said officer, agent, or employee of the state, even though never received, if a duplicate of such document or payment is filed.

History: En. Sec. 1, Ch. 70, L. 1963.

Compiler's Note

The title to Chapter 70, Laws of 1963, indicates that this section is intended to

apply to Chapter 18 of Title 84, R. C. M. 1947. However, the body of the act does not specifically so indicate. For the title to Chapter 70, Laws of 1963, see Compiler's Note under section 84-1803.1.

84-1819. (2396.5) Penalty for false statements, unlawfully obtaining refunds, or unlawful use of gasoline tax exemption certificates. Any person

(a) who shall make any false statement in connection with the application for such refund or who shall collect or cause to be repaid to him, or to any other person, any such refund without being entitled to the same under the provisions of this act, or

(b) who shall make any false statement in any application for a permit to issue governmental gasoline tax exemption certificates or in any such certificate issued by him, or who shall use any gasoline for which such a certificate has been issued otherwise than for the purposes and

business of said governmental subdivision, or who shall collect any part of the tax in connection with a sale covered by a valid certificate, or

(c) who shall make any false statement in any application for a permit to issue aviation gasoline tax exemption certificates or in any such certificate issued by him, or who shall use any aviation gasoline for which such a certificate has been issued otherwise than in aircraft or who shall collect that part of the tax, not allocated to the state aeronautics commission, in connection with a sale covered by a valid certificate shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed the sum of one thousand dollars (\$1,000.00) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 17, L. 1927; amd. Sec. 4, Ch. 17, L. 1955; amd. Sec. 4, Ch. 64, L. 1963; amd. Sec. 221, Ch. 147, L. 1963.

Chapter 147, Laws 1963, substituted "state aeronautics commission" for "state aviation fund" in former subsection (b) (now (c)).

Compiler's Note

This section was amended twice in 1963, by Ch. 64 and by Ch. 147. Neither amendatory act mentioned nor included the changes made by the other. Since the amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments.

Amendments

Chapter 64, Laws 1963, inserted a new paragraph (b) and redesignated former paragraph (b) as (c).

Separability Clause

Section 5 of Ch. 64, Laws 1963 read "If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not effect, impair or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

84-1831. Definitions. As used in this act, the following definitions shall apply:

(a) and (b). * * * [Same as parent volume.] ✓

(c) As used in this act, "public roads and highways of this state" shall mean all streets, roads, highways, and related structures as have been, or shall be, built and maintained with appropriated funds of the United States and which have been, or shall be, built and maintained with funds of the state of Montana, or any political subdivision thereof, or which have been or shall be dedicated to public use or have been acquired by eminent domain.

(d) "Motor vehicle" means any vehicle which is self-propelled upon the highways.

(e) "Special fuel" means those combustible gases and liquids commonly referred to as liquid petroleum gases and also diesel fuel or any other volatile liquid of less than forty-six degrees (46°) A. P. I. (American Petroleum Institute) gravity test, when actually sold for use in motor vehicles propelled upon the public highways or streets within the state of Montana.

(f) and (g). * * * [Same as parent volume.] ✓

(h) "Special fuel user" means any person other than a county, incorporated city or town or school district of this state, who consumes in this state special fuel for the propulsion of motor vehicles owned or con-

trolled by him upon the highways of this state.

(i). * * * [Same as parent volume.] ✓

History: En. Sec. 2, Ch. 162, L. 1955; amd. Sec. 3, Ch. 247, L. 1959, amd. Sec. 1, Ch. 66, L. 1963; amd. Sec. 7, Ch. 70, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 66 and once by Ch. 70. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments.

Amendments

The 1959 amendment substituted pres-

ent subd. (c) for one that read: "Highway" means every way or place generally open to the use of the public for the purpose of vehicular travel, notwithstanding that they may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair or reconstruction."

Chapter 66, Laws 1963, inserted the words "other than a county, incorporated city or town or school district of this state" in subd. (h).

Chapter 70, Laws 1963, completely rewrote paragraph (e), for previous text of which see parent volume.

84-1832. Tax imposed. There is hereby levied and imposed a tax on the use of each and every gallon of special fuel in any motor vehicle while operated upon the highways, equivalent to the lawful tax levied on motor fuel under section 84-1813, or on liquid petroleum gases under section 84-1802. Said tax, with respect to all special fuel delivered by a special fuel dealer into supply tanks of motor vehicles in this state, shall attach at the time of such delivery and shall be collected by such special fuel dealer from the special fuel user and shall be paid over to the board as hereinafter provided. Said tax, with respect to special fuel acquired by any special fuel user in any manner other than by delivery by a special fuel dealer into a fuel supply tank of a motor vehicle, shall attach at the time of the consumption of such fuel in the propulsion of a motor vehicle upon the highways of the state and shall be paid over to the board by the special fuel user as hereinafter provided. The various counties, incorporated cities and towns and school districts of this state shall be exempt from the levy and imposition of this tax.

History: En. Sec. 3, Ch. 162, L. 1955; amd. Sec. 2, Ch. 66, L. 1963.

Amendment

The 1963 amendment added the last sentence.

Effective Date

Section 3 of Ch. 66, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 25, 1963.

84-1833. Special fuel dealers' and special fuel users' licenses and special fuel vehicle permits. (a) Required: It shall be unlawful for any person to act as a special fuel dealer in this state unless such person is the holder of an uncanceled fuel dealers' license issued to him by the board.

Every special fuel user shall obtain from the board, prior to the use of such special fuel for the propulsion of a motor vehicle or vehicles in this state, a special fuel users' license, and a special fuel vehicle permit for each such vehicle or vehicles operated by him upon the highways as herein defined, which permit shall at all times be carried in the vehicle for which it was issued, and shall be exhibited for inspection on request of any checking station officer, Montana highway patrol officer, any member of the state

board of equalization or any authorized employee of said board, or any other law enforcement officer.

(b) and (c). * * * [Same as parent volume.] ✓

(d) Bond: No special fuel dealer's license or special fuel user's license shall be issued to any person or continued in force unless such person has furnished bond, as defined in section 84-1831 (i) and in such form as the board may require to secure its compliance with this act, and the payment of any and all taxes, interest and penalties due and to become due hereunder.

The total amount of the bond or bonds required of any special fuel dealer or special fuel user shall be equivalent to twice his estimated monthly tax payments as hereinafter provided, determined in such manner as said board may deem proper; provided, however, that the total amount of the bond or bonds shall never be less than five hundred dollars (\$500.00), for a special fuel user and not less than one thousand dollars (\$1,000.00) for a special fuel dealer.

(e) to (g). * * * [Same as parent volume.] ✓

(h) Revocation, suspension, cancellation and surrender of license and permit: The board may revoke the license of any special fuel dealer or special fuel user or any special fuel vehicle permit for reasonable cause. Before revoking such license or permit, the board shall notify the licensee or permittee of its intention so to do, by either certified or registered mail, addressed to his last known address shown in the files of the board, requiring him to appear before the board on a day and hour specified in such notice, not more than thirty (30) days nor less than ten (10) days from date of such notice, and show cause, if any he has, why the license or the permit, or each of them, should not be revoked; provided, however, that at any time prior to and pending such hearing the board may, in the exercise of reasonable discretion, suspend such license or permit.

Upon revocation by the board of any such license or permit, the holder thereof shall immediately surrender the same to the board for cancellation; and the holder of any such permit, having permanently discontinued the use of any vehicle for which the permit was issued, for whatever reason, shall immediately surrender the same to the board for cancellation.

The board shall cancel any license to act as a special fuel dealer or a special fuel user or any special fuel vehicle permit immediately upon surrender thereof by the holder.

(i). * * * [Same as parent volume.] ✓

(j) Additional bond or deposit: The board may require a special fuel dealer or special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in section 2 (i) [84-1831 (i)], if, in its opinion, the security of the surety bond theretofore filed by such special fuel dealer or special fuel user, or the market value of the properties deposited as security by such special fuel dealer or special fuel user, shall become impaired or inadequate; and upon failure of the special fuel dealer or special fuel user to give such new additional surety bond or to deposit additional securities within thirty (30) days after

being requested so to do by the board, said board forthwith shall cancel his license.

(k) All special fuel taxes due from any dealer or user under the provisions of this act, together with all penalties and interest thereon shall be a lien upon any and all property of such dealer, user or other person upon the filing by the state board of equalization of a duplicate copy of the statement so made by the state board of equalization, or a certified copy of any statement filed by said board in the office of the county clerk of the county where such property is situated which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963.

Amendments

The 1957 amendment in subd. (a) deleted a former second sentence which read "Except for special fuel which is delivered by a special fuel dealer into a fuel supply tank of any motor vehicle in this state, it shall be unlawful for any person to consume special fuel for the propulsion of a motor vehicle upon the highways of this state unless such person is the holder of an uncanceled fuel user's license issued to him by the board" and substituted the present second paragraph for one which read "Every special fuel user shall obtain prior to the use of special fuel for the propulsion of a motor vehicle or vehicles, in this state, a special fuel vehicle permit for such vehicle or vehicles operated by him upon the highways as herein defined"; in subd. (h) inserted in the caption to said subdivision the word "suspension" and deleted the

reference to "bond"; in the first sentence substituted the word "any" for "a" and in the second sentence substituted the words "of its intention so to do, by either certified or registered mail, addressed to his last known address shown in the files of the board, requiring him to appear before the board on a day and hour specified in such notice, not more than thirty (30) days nor less than ten (10) days from date of such notice, and show cause, if any he has, why the license or the permit, or each of them," for the words "to show cause within thirty (30) days of the date of the notice why the license or permit" and added the second paragraph; in subd. (j) substituted the word "its" for "his" appearing before the word "opinion" and changed spelling of the word "therefor" to "theretofore."

The 1963 amendment increased the special fuel dealer's bond by adding "for a special fuel user and not less than one thousand dollars (\$1,000.00) for a special fuel dealer" at the end of subsection (d); and added subsection (k).

84-1834. Special fuel dealers' and special fuel users' records. (a) Preparation of records and inspection of: Every special fuel dealer, special fuel user and every person importing, manufacturing, refining, dealing in, transporting or storing, special fuel in this state, shall keep such records, receipts and invoices and other pertinent papers, with respect thereto as the board may require, and shall produce them for the inspection of the board at any time during the business hours of the day.

(b) Retention of records: Said records, receipts, invoices and other pertinent papers shall be required to be kept for a period of at least five (5) years from the date on which the return to which they relate was required to have been made.

History: En. Sec. 5, Ch. 162, L. 1955; amd. Sec. 2, Ch. 216, L. 1957.

Amendment

The 1957 amendment inserted the words "and inspection of" to the heading of subd. (a) and substituted the words "and shall produce them for the inspection of

the board at any time during the business hours of the day" for a former last sentence of subd. (a) which read "The records, receipts, invoices and other pertinent papers shall be available at all times during the business hours of the day, to the board" and in subd. (b) substituted the word "on" for the word "of."

84-1835. Monthly returns and payments. (a) Returns: For the purpose of determining the amount of his liability for the tax herein imposed, each special fuel dealer and each special fuel user shall file with the board, on forms prescribed by said board, a monthly tax return. Such return shall contain a declaration by the person making the same, to the effect that the statements contained are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification. The return shall show such information as the board may reasonably require for the proper administration and enforcement of this act; provided, however, that if a special fuel dealer or user is also a wholesale distributor of special fuel at a location where special fuel is delivered into the supply tank of a motor vehicle, and if separate storage is provided thereat from which special fuel is delivered or placed into fuel supply tanks of motor vehicles, the monthly return to the board need not include inventory control data covering bulk storage from which wholesale distribution of special fuel is made. The special fuel dealer or special fuel user shall file the return on or before the twenty-fifth (25th) day of the next succeeding calendar month following the monthly period to which it relates; provided, however, that for good cause the board may grant a taxpayer a reasonable extension of time for filing, but not to exceed thirty (30) days.

If the final filing date falls on a Saturday, Sunday or legal holiday, the next secular or business day shall be the final filing date. Such reports shall be considered filed or received on the date or as provided in this chapter.

(b) to (i). * * * [Same as parent volume.] ✓

History: En. Sec. 6, Ch. 162, L. 1955;
amd. Sec. 9, Ch. 70, L. 1963.

Effective Date

Section 10 of Ch. 70, Laws 1963 provided the act should be in effect after its passage and approval. Approved February 25, 1963.

Amendment

The 1963 amendment substituted "date or as provided in this chapter" for "date shown as received by the board" at the end of subsection (a).

84-1839. Violations and penalties. (a) Penalties and remedies: Any person violating any provision of this act is guilty of a misdemeanor, unless the act is by any other law of this state declared to be a felony, and upon conviction is punishable by a fine of not less than one hundred dollars (\$100.00) nor more than two thousand dollars (\$2,000.00) or by imprisonment for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

(b) Penalties are cumulative: The fine and imprisonment provided for in this section shall be in addition to any other penalty imposed by any other provision of this act.

History: En. Sec. 10, Ch. 162, L. 1955;
amd. Sec. 3, Ch. 216, L. 1957.

(c) to (b), and in subd. (a) substituted the word "act" for the word "section."

Amendment

The 1957 amendment deleted former subd. (a) for text of which see parent volume, relettered former (b) to (a) and

Repealing Clause

Section 4 of Ch. 216, Laws 1957 repealed all acts and parts of acts in conflict therewith.

84-1840. Disposition of funds. All taxes, interest and penalties collected under this act shall be turned over promptly to the state treasurer and the state treasurer shall place the same in the earmarked revenue fund to the credit of the state highway department.

History: En. Sec. 11, Ch. 162, L. 1955; amd. Sec. 213, Ch. 147, L. 1963.

the earmarked revenue fund to the credit of the state highway department" for "to the credit of the state highway fund."

Amendment

The 1963 amendment substituted "in

84-1842. Temporary permits to unlicensed users of special fuel vehicles—agents by whom issued. A temporary permit shall be issued to all unlicensed users of all special fuel vehicles operating within the state of Montana. The permits will be issued by scale house personnel, gross vehicle weight (g.v.w.) patrol crews, Montana highway patrolmen, and such other enforcing agents as the board of equalization may prescribe by order, rule or regulation.

History: En. Sec. 1, Ch. 200, L. 1961.

Title of Act

An act to provide for issuing temporary permits to unlicensed special fuel users of all special fuel vehicles; to provide that said permits shall be issued for a minimum fee of twenty dollars (\$20.00) and

shall be valid for a period of time not to exceed seventy-two (72) hours; to provide for a method of collection and disposal of said fees; to provide that the state board of equalization shall furnish said permits and forms and generally enforce this act; and providing a penalty.

84-1843. Fees for temporary permits—time of expiration—disposition of fees—forms. The temporary special fuel permits shall cost the special fuel vehicle user a fee of twenty dollars (\$20.00); said permit shall be valid for a period of time not to exceed seventy-two (72) hours and will be automatically void should said vehicle leave the state of Montana during the seventy-two (72) hour period. All fees collected will be remitted to the state board of equalization. Special fuel temporary permits, remittance forms and any other necessary papers for the accounting and enforcement of this act shall be furnished by the state board of equalization.

History: En. Sec. 2, Ch. 200, L. 1961.

84-1844. Penalty for operation without temporary permit—compliance bonds. Any unlicensed user of special fuel vehicles operating within the state of Montana, without making application for said temporary permit, and paying the specified fee, shall be guilty of committing a misdemeanor and upon conviction, be fined fifty dollars (\$50.00). Nothing contained herein shall affect the existing policy of accepting a compliance bond to be retained for use by the state board of equalization and to be imposed at the discretion of the enforcing agency.

History: En. Sec. 3, Ch. 200, L. 1961.

CHAPTER 19—LICENSE AND OTHER TAX PROCEEDS—
HOW DISPOSED OF

Section 84-1901. Disposition of moneys from certain designated license and other taxes.

84-1901. Disposition of moneys from certain designated license and other taxes. The state treasurer shall deposit to the credit of the state general fund all moneys received by him from the collection of automobile drivers' license fees under section 1741.11, electric energy producers' license taxes under sections 84-1601 to 84-1609, inclusive, metalliferous mines license taxes under sections 84-2001 to 84-2015, inclusive, telegraph license taxes under sections 84-2501 to 84-2508, inclusive, oil producers' license taxes under sections 84-2201 to 84-2211, inclusive, natural gas distributors' license taxes under sections 84-2101 to 84-2110, inclusive, liquor license taxes under chapter 4 of Title 4, telephone license taxes under sections 84-2601 to 84-2608, inheritance and estate taxes under sections 91-4401 to 91-4459, inclusive, and seventy-five per centum (75%) of all moneys received from the collection of income taxes under sections 84-4901 to 84-4935, inclusive, and corporation license taxes under sections 84-1501 to 84-1519, inclusive, the remaining twenty-five per centum (25%) thereof to be deposited to the credit of the earmarked revenue fund for state equalization aid to the public schools of Montana in order to comply with the provisions of section 1a of article XII of the constitution of the state of Montana; and the state treasurer shall also deposit to the credit of the state general fund all moneys received by him from the collection of license taxes, fees and from all other sources under the operation of the Montana beer act, and being sections 4-301 to 4-356, inclusive, and all net revenues and receipts received by him from and under the operation of the state liquor control act, being sections 4-101 to 4-237.

History: En. Sec. 1, Ch. 14, L. 1941; amd. Sec. 51, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words "on and after July 1, 1941" after "moneys received by him" in two places; substituted "earmarked revenue fund for state equalization aid to the public schools of Montana" for "common school equalization fund"; and deleted a proviso which read, "provided, however, that the credit-

ing of such moneys to such common school equalization fund shall have no relation to nor in any manner affect any appropriation made by any legislative assembly for such fund and shall not in any manner limit or restrict any such appropriation unless the amount so credited to such fund from such income tax collections in any one fiscal year shall equal or exceed the budget request for appropriation for such fund for such fiscal year."

CHAPTER 20—LICENSE TAXES—METALLIFEROUS MINES

Section 84-2004. Amount of tax.

84-2006. Computation and notice of tax.

84-2007. Delinquent taxes—penalty.

84-2004. (2344.4) Amount of tax. The annual license tax to be paid by such person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semi-precious gems or stones are produced, shall be one dollar, together with an additional sum or amount computed on the gross value of product

which may have been derived by [such person from] such business, work or operation within this state during the calendar year immediately preceding, at the following rates one-half of one per cent ($\frac{1}{2}$ of 1%) of the amount by which such gross value of product exceeds one hundred thousand dollars (\$100,000) and does not exceed two hundred and fifty thousand dollars (\$250,000); three-fourths of one per cent ($\frac{3}{4}$ of 1%) of the amount by which such gross value of product exceeds two hundred and fifty thousand dollars (\$250,000) and does not exceed four hundred thousand dollars (\$400,000); one per cent (1%) of the amount by which the gross value of product exceeds four hundred thousand dollars (\$400,000) and does not exceed five hundred thousand dollars (\$500,000) and one and one-fourth per cent ($1\frac{1}{4}$ %) of the amount by which the gross value of product exceeds five hundred thousand dollars (\$500,000).

History: En. Sec. 4, Initiative No. 28, 1925; amd. Sec. 1, Ch. 220, L. 1957; amd. Sec. 1, Ch. 176, L. 1959.

Compiler's Note

The bracketed words "such person from" were inserted by the compiler. The words were in the section prior to the 1959 amendment, but were omitted from the 1959 act, apparently through a typographical error. Hence they were inserted in brackets by the compiler.

Amendments

The 1957 amendment increased the per cent of tax of the amount by which the gross value of product exceeds \$500,000.00 from 1% to $1\frac{1}{4}$ %.

The 1959 amendment increased the rate of tax from $\frac{1}{4}$ of 1% to $\frac{1}{2}$ of 1% on

amounts from \$100,000 to \$250,000; from $\frac{1}{2}$ of 1% to $\frac{3}{4}$ of 1% on amounts from \$250,000 to \$400,000, and from $\frac{3}{4}$ of 1% to 1% on amounts from \$400,000 to \$500,000.

Repealing Clauses

Section 2 of Ch. 220, Laws 1957 and Sec. 2 of Ch. 176, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 220, Laws 1957 provided the act should be in effect from and after July 1, 1957.

Section 3 of Ch. 176, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 7, 1959.

84-2006. (2344.6) Computation and notice of tax. The state board of equalization shall examine each such statement and return filed and determine and ascertain therefrom, and compute and assess the amount of the license tax to be paid by the person making and filing the same, and shall, not later than the first day of June, certify to the state treasurer the name of each person subject to the payment of license taxes under the provisions of this act, the amount thereof to be paid by such person. The said board shall at the same time mail to each person making and filing such statement and return, a written notice of the amount of the license tax to be paid by each, respectively, that the same is due and payable to the state treasurer, and that it will become delinquent at five o'clock p. m. on the thirtieth day of June, immediately following, and that if the same becomes delinquent a penalty of ten per centum will be added thereto, and that the whole amount of such license tax, with penalty added, will bear interest at the rate of twelve per centum per annum from the date the same becomes delinquent until paid. If any such person, has sold or otherwise disposed of any of its mine's products at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the state board of equalization shall compute the gross value of such portion of said mine's product, so sold or disposed of substantially below the

market price as aforesaid, which gross value shall be based upon the quotations of the price of such mine's product in New York City, at the time such portion of the product was so sold or otherwise disposed of as evidenced by some established authority or market report, such as the Engineering and Mining Journal, of New York, or some other standard publication, giving the market reports for the year covered by such statement. Should there be no quotation covering any particular product, then the state board of equalization shall fix the value of such gross product, or such portion thereof, as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable.

History: En. Sec. 6, Initiative No. 28, 1925; amd. Sec. 1, Ch. 165, L. 1959.

Amendment

The 1959 amendment advanced the due date set forth in the second sentence from November 30 to June 30.

84-2007. (2344.7) Delinquent taxes—penalty. All license taxes assessed under the provisions of this act shall become delinquent if not paid by five o'clock p. m., on the thirtieth day of June following the date when the same are assessed and certified to the state treasurer, and as the same become delinquent a penalty of ten per centum shall be added thereto, and the whole amount of said license tax, with penalty added, shall bear interest at the rate of twelve per centum per annum from the date of becoming delinquent until paid.

History: En. Sec. 7, Initiative No. 28, 1925; amd. Sec. 2, Ch. 165, L. 1959.

Repealing Clause

Section 3 of Ch. 165, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment advanced the due date from November 30 to June 30.

CHAPTER 21—LICENSE TAXES—NATURAL GAS DISTRIBUTORS

Section 84-2102. Natural gas distributors' license tax—amount—standard for measurement of gas distributed—persons not contemplated by act.

84-2102. (2408.2) Natural gas distributors' license tax—amount—standard for measurement of gas distributed—persons not contemplated by act. Every person engaged in or carrying on the business of distributing to consumers within this state, natural gas, produced, or not produced within this state, or engaged in or carrying on the business of owning, controlling, managing, leasing or operating within the state, any system or plant for the distribution of natural gas, produced, or not produced within this state, to consumers within this state for the purpose of use outside this state, or engaged in or carrying on the business of owning, controlling, managing, leasing or operating within this state, any system or plant for the distribution of natural gas, produced, or not produced within this state, to consumers within this state must, for the year beginning July 1, 1957, and each year thereafter when engaged in carrying on such business in this state, pay to the state treasurer for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business an amount equal to one-half

($\frac{1}{2}$) of one (1) cent for each one thousand (1000) cubic feet of such natural gas, produced within this state, or not produced within this state, and distributed by such person to consumers within this state, during such year, or conveyed through a pipeline to a point outside this state during such year, except in connection with the operating of natural gas wells from which the same was extracted or produced, or delivered by such person to any other person for sale, and that the standard or base pressure to be used in the measurement of such gas so distributed for determining the amount of license tax imposed hereunder, shall be ten (10) ounces above an atmospheric pressure of fourteen (14) and four-tenths ($\frac{4}{10}$) pounds per square inch, and at a temperature of sixty (60) degrees Fahrenheit, regardless of the atmospheric pressure and temperature at the point of measurement, and all measurements of gas shall be reduced, by computation, to these standards no matter what may have been the pressure and temperature at which gas was actually produced or measured; provided, however, that nothing in this act shall be construed as requiring laborers, employees, hired or employed, by any person to work on or about, or in connection with any natural gas well property or business, to pay such license taxes, nor shall any work required to be done in prospecting, or in developing, or opening up any natural gas property or plant, be deemed to be carrying on of natural gas business, or engaging in the business of working or operating of a natural gas well or plant; provided further, that if during any such work of developing any natural gas property, any marketable natural gas shall be extracted or produced and sold, then the same shall be deemed the carrying on of a natural gas business of distributing to consumers.

History: En. Sec. 2, Ch. 180, L. 1933; amd. Sec. 1, Ch. 52, Ex. L. 1933; amd. Sec. 1, Ch. 205, L. 1957.

tion and also substituted "beginning July 1, 1957" for the year "1934" and "one-half ($\frac{1}{2}$)" for "three-eighths ($\frac{3}{8}$)."

Amendment

The 1957 amendment substituted the word "consumers" for the words "the public" each time it appears in this sec-

Repealing Clause

Section 2 of Ch. 205, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 22—LICENSE TAXES—OIL PRODUCERS

Section 84-2202. Oil producers' license tax—amount—exceptions.

84-2202. (2398) Oil producers' license tax — amount — exceptions. Every person engaging in or carrying on the business of producing, within this state, petroleum, or other mineral or crude oil, or engaging in or carrying on the business of owning, controlling, managing, leasing or operating within this state any well or wells from which any merchantable or marketable petroleum or other mineral or crude oil is extracted or produced, sufficient in quantity to justify the marketing of the same, must, for the year beginning July 1, 1957, and each year thereafter, when engaged in or carrying on any such business in this state, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, computed at the following rates:

(a) two per cent of the total gross value of that portion of all the petroleum and other mineral or crude oil produced by such person from each lease or unit in the calendar quarter not in excess of an amount obtained by multiplying the number of producing wells on such lease or unit by four hundred fifty (450) barrels.

(b) two and one-half per cent of the total gross value of that portion of all the production of such person from each lease or unit in each calendar quarter in excess of four hundred fifty (450) barrels multiplied by the number of producing wells on such lease or unit; but in determining the amount of such tax there shall be excluded from consideration all petroleum, or other crude or mineral oil produced and used by such person during such year in connection with his operations in prospecting for, developing and producing such petroleum, crude or mineral oil; provided, however, that nothing in this act shall be construed as requiring laborers or employees, hired or employed by any person, to drill any oil well, or to work in or about any oil well, or prospect or explore for, or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay such license tax, nor shall any work be done, or the drilling of any well or wells, for the purpose of prospecting or exploring for petroleum or other mineral or crude oils, or for the purpose of developing same, be deemed to be engaging in or carrying on of any such business; provided, further, that in the doing of any such work, or in the drilling of any oil well, or in such prospecting, exploring or development work, any merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by such person for carrying on such operation shall be produced sufficient in quantity to justify the marketing of the same, then such work, drilling, prospecting, exploring or development work shall be deemed to be the engaging in and carrying on of such business within this state within the meaning of this section.

History: En. Sec. 2, Ch. 266, L. 1921; re-en. Sec. 2398, R. C. M. 1921; amd. Sec. 1, Ch. 67, L. 1923; amd. Sec. 1, Ch. 221, L. 1957; amd. Sec. 1, Ch. 172, L. 1959.

Amendments

The 1957 amendment substituted "beginning July 1, 1957" for the year "1923"; substituted a semicolon, the words "computed at the following rates:" and a new subd. (a) reading, "(a) two per cent of an amount determined by multiplying the number of producing wells of such person on each lease or unit by the total gross value of the first four hundred fifty (450) barrels of petroleum and other mineral or crude oil produced from such lease or unit in each calendar quarter" for the words "in an amount equal to two per centum of the total gross value of all petroleum and other mineral or crude oil produced by such person within this state during such year"; and created a new subd. (b), inserting at the beginning thereof the words "two and one-half per cent of the total gross value of all such

production of such person in excess of the first four hundred fifty (450) barrels per calendar quarter from each lease or unit."

The 1959 amendment substituted present subd. (a) and the portion of present subd. (b) preceding the first semicolon therein, respectively, for the subd. (a) inserted by the 1957 amendment and for the words inserted by the 1957 amendment at the beginning of subd. (b).

Repealing Clauses

Section 2 of Ch. 21, Laws 1957 and Sec. 3 of Ch. 172, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 221, Laws 1957 provided the act should be in effect from and after the first day of July, 1957.

Section 2 of Ch. 172, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 7, 1959.

CHAPTER 26—LICENSE TAXES—TELEPHONE COMPANIES

Section 84-2601. Annual tax levied on gross income of telephone business.

84-2602. Statement and payment on gross income—certain business excluded.

84-2601. Annual tax levied on gross income of telephone business. That on and after the first day of April, 1957, there is hereby levied and shall be collected an annual tax of one and one-half per cent ($1\frac{1}{2}\%$) of the gross income, in excess of two hundred fifty dollars (\$250.00) quarterly, derived from any telephone business within this state including the transmission of telephone messages in this state, over telephone lines in this state owned by any person, association or corporation; provided, however, that no bill, statement or account rendered or given any customer shall set out or contain, as a separate item, any amount on account or by reason of the license tax imposed by this act. Such annual license tax shall be paid in quarterly installments for the quarters ending respectively March 31, June 30, September 30, and December 31, in each year.

History: En. Sec. 1, Ch. 94, L. 1937; amd. Sec. 1, Ch. 41, L. 1947; amd. Sec. 1, Ch. 213, L. 1957.

Amendment

The 1957 amendment substituted "April, 1957" for "April, 1947" and raised the annual tax from $1\frac{1}{4}\%$ to $1\frac{1}{2}\%$.

84-2602. Statement and payment on gross income—certain business excluded. Each and every person, association or corporation liable to tax under this act engaged in carrying on such telephone business in this state shall, within sixty (60) days after the end of each quarter, beginning with the quarter ending September 30, 1957, make out in duplicate and file with the state board of equalization, under oath, a statement in such form as the state board of equalization may require and prescribe, showing the total gross income of such person, association or corporation derived from the telephone business within this state including the transmission of telephone messages originating and terminating within this state, but excluding therefrom the gross income derived from the transmission of telephone messages passing through this state but both originating and terminating outside of this state and from those originating outside of, but terminating within this state and from those originating within but terminating outside of this state during the preceding quarter, and containing such other information as the state board of equalization may require; and shall accompany such statement with the payment to the state board of equalization of a license tax in the amount equal to one and one-half per cent ($1\frac{1}{2}\%$) of such gross income.

History: En. Sec. 2, Ch. 94, L. 1937; amd. Sec. 2, Ch. 213, L. 1957.

Repealing Clause

Section 3 of Ch. 213, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1957 amendment substituted "September 30, 1957" for "June 30, 1937" and "one and one-half per cent ($1\frac{1}{2}\%$)" for " $(1\frac{1}{4}\%)$."

Effective Date

Section 4 of Ch. 213, Laws 1957 provided the act should be in effect from and after the first day of July, 1957.

CHAPTER 27—LICENSES—GENERAL PROVISIONS CONCERNING
COUNTY LICENSES

Section 84-2708. Disposal of license moneys.

84-2708. (2420) Disposal of license moneys. All moneys collected for licenses must be paid into the treasury of the county in which the same are collected. The county treasurer shall retain fifty per cent thereof for the use of the county, he shall pay over forty-five per cent thereof to the state treasurer for the use of the general fund of the state and he shall pay over five per cent thereof to the state treasurer for deposit in the earmarked revenue fund to be used by the livestock commission for predatory animal control.

History: En. Sec. 1, Ch. 76, L. 1905; re-en. Sec. 2756, Rev. C. 1907; amd. Sec. 1, Ch. 54, L. 1921; re-en. Sec. 2420, R. C. M. 1921; amd. Sec. 104, Ch. 147, L. 1963.

deposit in the earmarked revenue fund to be used by the livestock commission for predatory animal control" for "for the use of the state bounty fund" at the end of the section.

Amendment

The 1963 amendment substituted "for

CHAPTER 28—LICENSES—FURNISHING TRADING STAMPS
WITH SALE OF MERCHANDISE

84-1205 to 84-1212. Unconstitutional.

Unconstitutionality

These sections (Secs. 1 to 8, Ch. 153, Laws 1961), requiring a license for the issuance of trading stamps, were de-

clared unconstitutional in *Garden Spot Market, Inc. v. Byrne*, — M —, 378 P 2d 220.

CHAPTER 33—LICENSES—MOVING PICTURE THEATERS

(Repealed—Section 1, Chapter 33, Laws of 1957)

84-3301 to 84-3307. Repealed.

Repeal

These sections (Secs. 1 to 6, 8, Ch. 91, L. 1937; amd. Sec. 1, Ch. 74, L. 1953),

relating to licenses for moving picture theaters, were repealed by Sec. 1, Ch. 33, Laws 1957, effective April 1, 1957.

CHAPTER 34—LICENSES—PRODUCE WHOLESALERS

84-3410. (2443.10) Appeal to district court.

Cross-Reference

Application of Montana Rules of Civil Procedure to appeals from commissioner,

see Table A, M. R. Civ. P. (sec. 93-2711-7).

CHAPTER 38—LEVY OF TAXES

Section 84-3804. Increase of state tax levy—support units of university.

84-3807. Tax operates as a judgment or lien.

84-3804. Increase of state tax levy—support units of university. The rate of taxation on real and personal property for state purposes, as is hereafter defined, for each year for a period of ten (10) years beginning with the year 1959; shall be increased six (6) mills on each dollar of taxable valuation in addition to the levy which is now or may hereafter be authorized by section 9 of article XII of the constitution of the state of Montana, and the legislative assembly is authorized and empowered to levy an addi-

tional tax for state purposes for each of said years of not exceeding six (6) mills on each dollar of taxable valuation for state purposes, and all money derived from said additional levy of six (6) mills for each of said years or so much thereof as may be necessary shall be appropriated by the legislative assembly for the support, maintenance and improvement of the state university of Missoula, the state college of agriculture and mechanic arts at Bozeman, the Montana state school of mines at Butte, the western Montana college of education at Dillon, the eastern Montana college of education at Billings, and the northern Montana college at Havre, now comprising the units of the university of Montana, together with the agricultural experiment station and its branches and substations, and the agricultural extension service, including the soil survey and grain laboratory.

History: En. Sec. 1, Ch. 218, L. 1957. Referendum No. 61, approved at election Nov. 4, 1958, effective under Governor's proclamation on Dec. 8, 1958.

Compiler's Notes

This section is substituted for Sec. 1, Ch. 217, Laws 1947 and given the same section number at it covers the same subject matter. Section 1, Ch. 217, Laws 1947 was repealed by Sec. 4, Ch. 218, Laws 1957, effective Dec. 8, 1958.

Sections 2 and 3 of Ch. 218, Laws 1957 provided for submission of the act to the people at the general election of 1958.

Effective Date and Repealing Clause

Section 4 of Ch. 218, Laws 1957 read

84-3805. (2150) Rate of county fixed by board of county commissioners.

Time of Attachment of Lien

Even though section 84-3809 provides that the tax lien attaches in March, the lien cannot become choate for the pur-

"This act shall be in full force and effect from and after its passage by this legislative assembly, approval by a majority vote of the qualified electors and proclamation of the governor thereafter; provided however, nothing contained herein shall be construed to or shall in any manner effect a repeal of chapter 217 of the laws of 1947 unless a majority of all votes cast at the referendum election herein provided shall be in favor of this act. Upon approval of this act by a majority of all votes cast at the referendum election herein provided, chapter 217 of the laws of 1947 and all other acts and parts of acts in conflict herewith shall be hereby repealed." Governor's proclamation, dated December 8, 1958.

pose of determining its priority as against federal tax liens until the amount is determined pursuant to this section. *Streeter Bros. v. Overfelt*, 202 F Supp 143, 145.

84-3807. (2152) Tax operates as a judgment or lien. Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property in the possession of the person assessed from and after the date the assessment is made. The county treasurer may issue a writ of execution for delinquent personal property taxes and deliver the same to the sheriff. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the same, to be collected in the same manner. The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.

History: En. Sec. 82, p. 104, L. 1891; re-en. Sec. 3827, Pol. C. 1895; re-en. Sec. 2600, Rev. C. 1907; re-en. Sec. 2152, R. C. M. 1921; amd. Sec. 1, Ch. 166, L. 1963. Cal. Pol. C. Sec. 3716.

Amendment

The 1963 amendment substituted "per-

sonal property in the possession of the person assessed from and after the date the assessment is made" at the end of the first sentence for "personal property of the delinquent"; and inserted the second and third sentences.

Repealing Clause

Section 2 of Ch. 166, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Priority of Tax Claims

This section and section 84-3809 do not and cannot in themselves operate to confer priority on state tax claims over those of the federal government. *Streeter Bros. v. Overfelt*, 202 F Supp 143, 145.

84-3809. (2154) Tax upon real property and tax on, etc.**Priority of Tax Claims**

This section and section 84-3807 do not and cannot in themselves operate to confer priority on state tax claims over those of the federal government. *Streeter Bros. v. Overfelt*, 202 F Supp 143, 145.

Time of Attachment of Lien

Even though this section provides that the tax lien attaches in March, the lien cannot become choate for the purpose of determining its priority as against federal tax liens until the amount is determined pursuant to section 84-3805. *Streeter Bros. v. Overfelt*, 202 F Supp 143, 145.

CHAPTER 41—COLLECTION OF GENERAL PROPERTY TAXES—TAX SALES—REDEMPTION—TAX DEEDS—SALE OF TAX DEED LANDS

Section 84-4132.1. Hospitals, charitable corporations, nonprofit associations—redemption of lands after 20 years where no assignment of certificate or no action for tax deed taken.

84-4198. Lessee of tax-deed lands has right within 30 days to purchase at appraised value.

84-4132. (2201) Time for redemption.**Mining Property**

Under the provisions of section 93-2829 where a mining company neglected to pay its taxes, a cotenant, having a right to operate the mining property and pay all expenses of such operation and account to

other cotenants, had sufficient interest in patented mining claims, separately assessed to the mining company, to permit her to redeem the property from a tax sale. *Dudley v. Higgins*, — M —, 375 P 2d 689, 691.

84-4132.1. Hospitals, charitable corporations, nonprofit associations—redemption of lands after 20 years where no assignment of certificate or no action for tax deed taken. That from and after the passage and approval of this act, any hospital, charitable corporation, or nonprofit association having an equitable or legal interest in real estate heretofore sold for taxes or assessments to any county, or which has been struck off to any county when the property was offered for sale, or to which real property a lien for taxes or assessments has attached, and where such sale or tax lien is more than twenty (20) years old, and no assignment of the certificate of such sale or of said tax lien has been made, and no action for the issuance of a tax deed has been taken, shall be permitted to redeem the same and pay such tax lien, by paying the original tax or assessment due thereon, without the payment of any penalty or interest thereon. Such redemption of tax sale or payment of tax lien must be made on or before the 1st day of December, 1957, if it is to be made without the payment of penalty or interest. This act shall not apply to the purchaser of any certificate of sale made prior to the passage and approval of this act.

History: En. Sec. 1, Ch. 112, L. 1957.

Title of Act

An act to permit real property to be redeemed from tax sale or tax lien where such sale or lien is more than twenty (20) years old, and no assignment thereof has been made, and no proceedings for tax

deed initiated, by paying the original tax or assessment, provided such original taxes or assessment be paid on or before December 1, 1957; providing for a constitutionality provision and providing for an effective date and repealing all acts and parts of acts in conflict herewith.

Separability Clause

Section 2 of Ch. 112, Laws 1957 read "If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portion of this act."

Repealing Clause

Section 4 of Ch. 112, Laws 1957 read "All acts and parts of acts are hereby repealed."

Effective Date

Section 3 of Ch. 112, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 5, 1957.

84-4144. Confirmation of tax deed—action for, authorized.**Cross-Reference**

Application of Montana Rules of Civil Procedure to action for confirmation of

tax deed, see Table A, M. R. Civ. P. (sec. 93-2711-7).

84-4151. (2209) Notice of application for tax deed.**Affidavit**

Where affidavit recited that notice of application was published for two consecutive weeks, but did not aver that the first publication was made 60 or more days in advance of the tax deed as required by this section, such affidavit was defective and hence the tax deed is fatally defective. *Bentley v. Rosebud County*, 230 F 2d 1.

Special Assessment by Irrigation District

Where irrigation district's purported special assessments were made en bloc, not individually, the assessments were insufficient to create a lien and district was not entitled to notice of application for tax deeds under this section. *Vail v. Custer County*, 132 M 205, 315 P 2d 993, 999.

84-4156. (2212) Affidavit showing notice given—sum allowed therefor.**Affidavit**

Where affidavit recited that notice of application was published for two consecutive weeks, but did not aver that the first publication was made 60 or more days in advance of the tax deed as required by section 84-4151, such affidavit was de-

fective and hence the tax deed fatally defective. *Bentley v. Rosebud County*, 230 F 2d 1.

References

Cited or applied as section 2212, R. C. M. 1935 in *Marek v. Smith*, 132 M 73, 314 P 2d 864, 865.

84-4158. (2214) Procedure in actions to quiet title to tax deed property.**Cross-Reference**

Application of Montana Rules of Civil Procedure to this section, see Table A, M. R. Civ. P. (sec. 93-2711-7).

Deposit of Taxes and Other Costs

Where order was entered in conformity with opinion of supreme court, requiring plaintiff to pay to defendant certain sum and reciting that if plaintiff refused to deposit sum by specified date, judgment would be entered for defendant quieting title in him and motion of plaintiff to vacate such order was not brought on for hearing for more than 12 years after it was made, laches of plaintiff barred relief. *State ex rel. Johnstone v. District Court*, 132 M 377, 319 P 2d 957, 959.

Order Requiring Deposit

This section, requiring the court upon hearing to fix the amount of taxes, interest, penalties, and money spent in improving the property and requiring a deposit of such amount does not authorize the court to postpone such determination and merely requires a bond be deposited to cover such amount. The court's duty is to determine the amount necessary for plaintiff to deposit in court and then fix the time for its payment. *State ex rel. Johnson v. District Court*, 130 M 103, 295 P 2d 1042, 1044.

References

Cited or applied in *Marek v. Smith*, 132 M 73, 314 P 2d 864, 866.

84-4160.1. (2214.2) Validation of tax deeds.**History Correction**

History: En. Sec. 1, Ch. 79, L. 1933; amd. Sec. 1, Ch. 132, L. 1937; amd. Sec.

1, Ch. 94, L. 1939; amd. Sec. 1, Ch. 105, L. 1939; amd. Sec. 1, Ch. 171, L. 1947.

84-4162. (2215.1) Action to procure tax deed—taxes to be paid.**Cross-Reference**

Application of Montana Rules of Civil

Procedure to action for tax deed, see Table A, M. R. Civ. P. (sec. 93-2711-7).

84-4168. (2215.7) Judgment—order to issue tax deed to plaintiff, etc.**Collateral Attack**

Decree in favor of plaintiff, son of deceased, in action to procure tax deed could not be collaterally attacked in condemnation proceedings on the ground of defective service where it was expressly found that defendant son, and the administrator of the estate of the deceased, were

the same person and that all defendants had been duly and legally served and there was no suggestion that creditors of the deceased or estate yet remained to be paid, or that final settlement of the estate would be dependent upon this asset. *United States v. Hoerner*, 157 F Supp 563, 564, 566.

84-4170. (2215.9) Effect of deed.**Void Assessment**

Where county assessed tax on minerals and mineral rights under the land but did not assess a tax on the party's right of entry for mining purposes, a tax deed

based on such proceeding was void since under Const. Art. XII, sec. 3 the minerals or mineral rights cannot be taxed. *Lehfeldt v. Adams*, 130 M 395, 303 P 2d 934.

84-4176. (2222) Taxes, etc., illegally collected to be refunded.**Mandamus to Compel Refund**

Mandamus was not a proper remedy to compel the county commissioners to refund erroneously collected taxes, since this section gives a plain, speedy and adequate remedy at law. *Moran v. Board*

of County Commrs., 139 M 351, 363 P 2d 1073, 1074.

References

Cited or applied in *Minerals Engineering Co. v. Greene*, 131 M 119, 308 P 2d 977, 981.

84-4180. (2225) What mistakes do not affect sale of property for taxes.**Due Process**

Tax sale is a proceeding in rem against the property itself and not in personam. Thus a notice with description of the property accurately contained therein suffices to support any requirements of due process. *Meyer v. Chessman*, 132 M 187, 315 P 2d 512, 514.

quired no property rights in disputed land by deed from transit company because at the time they received deed transit company had already been divested of title in proceedings for the taking of a tax deed. *Meyer v. Chessman*, 132 M 187, 315 P 2d 512, 514.

References

Cited in *Vail v. Custer County*, 132 M 205, 315 P 2d 993, 999.

Proceedings for Tax Sale

Defendants in quiet title action ac-

84-4190. Sale of county tax deed lands—procedure—preferential, etc.**References**

Cited in *Flom v. Unknown Heirs of Conrad*, 132 M 574, 319 P 2d 499, 502.

84-4193. Unsold land—how disposed of—interest rate.**References**

Cited in *Flom v. Unknown Heirs of Conrad*, 132 M 574, 319 P 2d 499, 502.

84-4198. Lessee of tax-deed lands has right within 30 days to purchase at appraised value. Whenever tax deed lands now held, or hereafter acquired, by any county of this state, have been leased pursuant to the provisions of section 84-4194, and thereafter the board of county commissioners shall receive an offer for the purchase of said lands under the provisions of section 84-4193, the said board shall by registered mail notify the lessee, who shall have a period of thirty (30) days after the mailing of such notice within which he may purchase the leased property

at the appraised value thereof. Provided that nothing herein contained shall prohibit the board from, at any time, reappraising, readvertising and offering such land at public sale under the provisions of section 84-4190. When tax deed lands held by the county are offered at public sale, pursuant to the provisions of section 84-4190, the lessee of such lands need not make a higher bid than others, but shall if bidding an amount equal to the highest bidder be given the preference.

History: En. Sec. 1, Ch. 147, L. 1943;
amd. Sec. 1, Ch. 75, L. 1963.

Amendment

The 1963 amendment added the final sentence.

CHAPTER 42—COLLECTION OF PERSONAL PROPERTY TAXES
NOT A LIEN ON REAL ESTATE—ROAD AND POOR TAXES

Section 84-4202. Duty of treasurer.

84-4202. (2239) Duty of treasurer. The county treasurer must collect taxes on all personal property, and in the case provided in the preceding section, it shall be the duty of the treasurer immediately upon receipt of such report from the assessor to notify the person or persons against whom the tax is assessed that the amount of such tax is due and payable at the county treasurer's office. The county treasurer must, at the time of receiving the assessor's report, and in any event within thirty (30) days from the receipt of such report, levy upon and take into his possession such personal property against which a tax is assessed, or any other personal property in the hands of the delinquent taxpayer, and proceed to sell the same, in the same manner as property is sold on execution by the sheriff, and the county treasurer may for the purpose of making such levy and sale, direct the sheriff to make such levy and sale, and the sheriff, undersheriff, or any deputy sheriff of such county is, ex officio, a deputy county treasurer for such purposes, and either may act and receive payment of such taxes. Such sheriff shall be entitled to receive the same fees as he is entitled to in making a seizure and sale under execution.

The county treasurer and his sureties are liable on his official bond for all taxes on personal property remaining uncollected by reason of the wilful failure and neglect of such treasurer to levy upon and sell such personal property for the taxes levied thereon.

The tax on such personal property may be collected and the payment thereof enforced by the seizure and sale of any personal property in the possession of the person assessed at any time after the date the assessment is made or by the institution of a civil action for its collection in any court of competent jurisdiction; provided, however, that a resort to any one of the methods as herein provided for, shall not bar the right to resort to either or both of the other methods, but that any or all of the methods herein provided for may be used until the full amount of such tax is collected.

The county shall have a general lien, dependent on possession, upon any monies in its possession belonging to any taxpayer, for any amounts due said county for any delinquent personal property taxes not a lien on real estate, of said taxpayer; provided, however, that due notice must be given the lienholder, if any.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2684, Rev. C. 1907; re-en. Sec. 2239, R. C. M. 1921; amd. Sec. 2, Ch. 102, L. 1923; amd. Sec. 1, Ch. 107, L. 1939; amd. Sec. 2, Ch. 23, L. 1951; amd. Sec. 1, Ch. 166, L. 1955; amd. Sec. 1, Ch. 165, L. 1963. Cal. Pol. C. Sec. 3821.

Amendment

The 1963 amendment inserted the words "or any other personal property in the hands of the delinquent taxpayer" in the second sentence of the first paragraph; added the third and fourth paragraphs; and deleted a final paragraph which read, "Nothing herein shall be construed as to

prevent the county treasurer from collecting taxes due on personal property by seizure and sale thereof at any time after the expiration of the period hereinbefore mentioned."

Repealing Clause

Section 2 of Ch. 165, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 165, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

CHAPTER 43—COLLECTION OF TAXES BY SUIT

84-4302. (2254) Complaint in action for taxes.

Cross-Reference

Application of Montana Rules of Civil

Procedure to this section, see Table A, M. R. Civ. P. (sec. 93-2711-7).

CHAPTER 45—PROTEST PAYMENT OF TAXES—ACTION TO RECOVER

Section 84-4501. Payment of license fees under protest—action to recover.

84-4501. (2409) Payment of license fees under protest—action to recover. Whenever any license fee is demanded of any person for the use and benefit of the state of Montana, and the same is deemed unlawful by the person from whom the same is demanded, such person may pay the same, or so much thereof as may be deemed unlawful, under written protest, specifying the grounds of protest, to the state agency or officer responsible for collecting the tax. The person paying, or his legal representatives, may bring an action in a court of competent jurisdiction against the state agency or officer responsible for collecting the tax to recover the same, without interest; provided, that any action instituted to recover any license paid under protest shall be commenced, and summons and copy of complaint served, within sixty (60) days after the date of payment thereof to the state agency or officer responsible for collecting the tax. If such action be finally decided adversely to the state, the state treasurer shall, upon receiving a copy of the final judgment in said action, refund such license fee to the person in whose favor such judgment is rendered.

History: En. Sec. 1, Ch. 188, L. 1921; re-en. Sec. 2409, R. C. M. 1921; amd. Sec. 1, Ch. 197, L. 1955; amd. Sec. 3, Ch. 126, L. 1963.

Amendment

The 1963 amendment rewrote this section. For section prior to amendment, see parent volume.

Prohibition as Remedy

District court should have denied application for writ of prohibition to restrain board of equalization from enforcing amendments to regulations relating to corporation license tax where tax could be paid under protest and action brought to recover under this section. *State ex rel. Fulton v. District Court*, 139 M 573, 366 P 2d 435, 437.

84-4502. (2269) Payment of taxes under protest—action to recover.**Complaint Insufficient**

Taxpayer's complaint to recover excessive taxes paid under protest failed to state a cause of action where it failed to allege that application to the county board of equalization for reduction in assessment before resorting to court, or appeared before county board, state board of equalization or anyone charged with the equalization of taxes, and defendant's demurrer should have been sustained. *Blair v. Potter*, 132 M 176, 315 P 2d 177, 178, 180.

Constitutionality

The 1955 amendment to this section properly included additional requirements for bringing actions based on the payment of taxes under protest and the amending act was not unconstitutional as being in contravention of section 23 of article 5 of the Montana constitution. *Van Tighem v. Linnane*, 136 M 547, 349 P 2d 569, 571.

Summons in Action for Refund

This section grants the taxpayer a choice of bringing the action against the

officer to whom the tax was paid or against the county in whose behalf the tax was collected and the state board of equalization and, where both the county treasurer and the state board of equalization were named as parties defendant, the fact that the service of summons on the board was properly quashed did not justify dismissal of the action against the county treasurer. *Van Tighem v. Linnane*, 136 M 547, 349 P 2d 569, 572.

Time Limitations

The words "and summons served," inserted by the 1955 amendment made an additional condition to be fulfilled by taxpayers bringing an action to recover taxes paid under protest and the 60-day limitation applies to both commencing the action and serving the summons. *Van Tighem v. Linnane*, 136 M 547, 349 P 2d 569, 571.

References

Cited in *Great Northern Railway Co. v. Roosevelt County*, 134 M 355, 332 P 2d 501, 504.

84-4503. (2270) Assessment for taxation—increase over statement, etc.**Sole Remedy for Over-valuation**

Where a person is liable to taxation for personal and real property, his sole remedy for an over-valuation and over-taxation is by the statutory procedure of appearing before the proper taxing boards

in the first instance. *Blair v. Potter*, 132 M 176, 315 P 2d 177, 181.

References

Cited in *Great Northern Railway Co. v. Roosevelt County*, 134 M 355, 332 P 2d 501, 504.

84-4504. (2272) Other remedies superseded.**References**

Cited in *Blair v. Potter*, 132 M 176, 315 P 2d 177, 180.

CHAPTER 46—BANKS—TAXATION**84-4603. (2065) Payment of taxes—entry of assessment.****Time of Assessment**

The shares of a bank are not assessed until the statements are furnished by the banks 5 days after demand, or assess-

ment by assessor in case of failure of banks to furnish statements. *Yellowstone Bank v. State Board of Equalization*, 137 M 198, 351 P 2d 904, 907.

CHAPTER 47—CITIES AND TOWNS—TAXATION AND LICENSE

Section 84-4711. Qualifications for voting on creation or increasing municipal or school indebtedness.

84-4701. (5194) Limitation on amount of tax for municipal purposes, etc.**References**

Cited in *Hill v. Billings*, 134 M 282, 328 P 2d 1112, 1116.

84-4711. (5199.1) Qualifications for voting on creation or increasing municipal or school indebtedness. That from and after the passage and approval of this act, only such registered electors of the city, town, school district, or other municipal corporation whose names appear upon the last preceding assessment roll shall be entitled to vote upon any proposal to create or increase any indebtedness of city, town, school district or other municipal corporation, required by law to be submitted to a vote of the electors thereof; provided however, that no such elector, otherwise qualified hereunder, shall be denied the right to vote by reason of the fact that the polling place for a general election for the precinct wherein he resides and is entitled to vote, lies within another city, town, school district or other municipal corporation.

History: En. Sec. 1, Ch. 98, L. 1923; district or municipal corporation and voting in another.
amd. Sec. 1, Ch. 47, L. 1929; amd. Sec. 1, Ch. 126, L. 1959.

Amendment

The 1959 amendment added at the end of the section the proviso concerning persons residing in one city, town, school

Effective Date

Section 2 of Ch. 126, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 5, 1959.

CHAPTER 48—FREIGHT LINE COMPANIES—TAXATION

Section 84-4825. Disposition of moneys—refund claims.

84-4825. Disposition of moneys—refund claims. All taxes collected under the provisions of this act shall be credited by the state treasurer to the state general fund. If any claim for refund be pending before the board, the board shall determine whether a refund should be made. An action or proceeding in court to determine the correctness of such tax must be instituted within sixty (60) days after the payment of the tax.

History: En. Sec. 9, Ch. 137, L. 1949; amd. Sec. 4, Ch. 126, L. 1963.

Amendment

The 1963 amendment rewrote this section. For section prior to amendment, see parent volume.

CHAPTER 49—INCOME TAX

- Section 84-4901. Income tax—definitions.
 84-4902. Rate of income tax.
 84-4903. Tax on nonresident.
 84-4903.1. Collection of tax from nonresidents—withholding authorized.
 84-4903.2. Deducting and withholding from payments to nonresidents—transmittal to state board of equalization—additional reports and information—rules and regulations—order for withholding payments.
 84-4903.3. Exceptions from withholding requirements.
 84-4903.4. Withholding agent.
 84-4903.5. Quarterly payment by withholding agent—exception.
 84-4903.6. Modification of withholding provisions.
 84-4903.7. Failure to withhold or pay—penalties.
 84-4903.8. Board may require withholding agent to make return and pay tax at any time.
 84-4903.9. Amounts withheld as lien against agent—priority.
 84-4903.10. Rights of nonresident.
 84-4903.11. Nonresident ad valorem taxpayers—list—duty of county assessor.
 84-4903.12. List of loans made to nonresidents upon grain for which chattel mortgage filed—duty of clerk to prepare.

- 84-4903.13. Rules and regulations.
- 84-4905. Adjusted gross income.
- 84-4907. Nonresident taxpayers.
- 84-4907.1. Veterans' bonus—exemption from income tax law.
- 84-4910. Exemptions.
- 84-4911. Income tax involving partnership—partnership statements required.
- 84-4914. Returns and payment of tax—penalty and interest—refunds—credits.
- 84-4915. Exemption allowed nonresident—effect of changing resident status.
- 84-4922. Revision—application—hearing—adjustment.
- 84-4923.1. Review by court.
- 84-4924. Penalties for violations of act.
- 84-4937. Credit allowed resident taxpayers for income taxes imposed by foreign states.
- 84-4943. Deduction and withholding of tax from wages—amount.
- 84-4956. Credits and refunds.

84-4901. (2295.1) Income tax—definitions. For the purpose of this act unless otherwise required by the context:

(1). * * * [Same as parent volume.]

(2) The word “taxpayer” includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this act, and does not include corporations.

(3) to (7). * * * [Subdivisions (3) to (7), same as parent volume.]

(8) The words “foreign country” or “foreign government” means any jurisdiction other than one embraced within the United States. The words “United States” include the states, the territory of Hawaii, and the District of Columbia.

(9) and (10). * * * [Same as parent volume.]

(11) The term “taxable income” means the gross income of a taxpayer less the deductions and exemptions provided for in this act.

History: En. Sec. 1, Ch. 181, L. 1933; amd. Sec. 1, Ch. 166, L. 1947; amd. Sec. 1, Ch. 253, L. 1959.

dent”; in subd. (8) substituted “the territory of Hawaii” for “the territories of Alaska and Hawaii” and added subd. (11).

Amendment

The 1959 amendment in subd. (2) inserted the words “resident or nonresi-

References

Cited or applied in State v. Toomey, 135 M 35, 335 P 2d 1051.

84-4902. (2295.2) Rate of income tax. There shall be levied, collected and paid for each taxable year upon the taxable income of every taxpayer subject to this tax, after making allowance for exemptions and deductions, as hereinafter provided, a tax at the following rates, to wit:

(a) On the first one thousand dollars (\$1,000.00) of taxable income, or any part thereof, at the rate of one per centum (1%);

(b) On the next one thousand dollars (\$1,000.00) of taxable income, or [any] part thereof, at the rate of two per centum (2%);

(c) On the next one thousand dollars (\$1,000.00) of taxable income, or any part thereof, at the rate of three per centum (3%);

(d) On the next two thousand dollars (\$2,000.00) of taxable income, or any part thereof, at the rate of four per centum (4%);

(e) On the next two thousand dollars (\$2,000.00) of taxable income, or any part thereof, at the rate of five per centum (5%);

(f) On any taxable income in excess of seven thousand dollars (\$7,000.00) at the rate of seven per centum (7%).

History: En. Sec. 2, Ch. 181, L. 1933; amd. Sec. 1, Ch. 40, Ex. L. 1933; amd. Sec. 1, Ch. 228, L. 1957; amd. Sec. 1, Ch. 265, L. 1959.

Compiler's Note

The bracketed word "any" in subd. (b) was inserted by the compiler.

Amendments

The 1957 amendment completely revised the rates of income tax (subs. (a) to (h)). For this portion of this section before amendment see parent volume.

The 1959 amendment substituted "taxable income" for "net income" each time it appears in this section; substituted "taxpayer" for "individual" and "exemptions" for "exceptions" in the preliminary sentence; raised the rate in subd. (b) from $1\frac{1}{2}\%$ to 2%; raised the rate in subd. (c) from 2% to 3%; substituted \$2,000 for \$1,000 and raised the rate from $2\frac{1}{2}\%$ to 4% in subd. (d); substituted \$2,000 for \$1,000 and raised the rate from 3% to 5% in subd. (e); and substituted subd.

(f) for former subs. (f), (g) and (h) which read as follows: "(f) On the next one thousand dollars (\$1,000.00) of net income, or any part thereof, at the rate of three and one-half per centum ($3\frac{1}{2}\%$); (g) On the next one thousand dollars (\$1,000.00) of net income, or any part thereof, at the rate of four per centum (4%); (h) On any net income in excess of seven thousand dollars (\$7,000.00) at the rate of five per centum (5%)."

Repealing Clauses

Section 2 of Ch. 228, Laws 1957 and Sec. 2 of Ch. 265, Laws 1959 repealed all acts or parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 228, Laws 1957 read "This act shall be effective as to all taxable periods ending on or after December 31, 1957, whether on the calendar or fiscal year basis."

Section 3 of Ch. 265, Laws 1959 read "This act shall be in full force and effect from and after December 31, 1959."

84-4903. (2295.3) Tax on nonresident. (a) A like tax is imposed upon every person not resident of this state which tax shall be levied, collected and paid annually, at the rates specified in section 84-4902, with respect to his entire net income as herein defined from all property owned and from every business, trade, profession, or occupation carried on in this state.

History: En. Sec. 3, Ch. 181, L. 1933; amd. Sec. 2, Ch. 253, L. 1959; amd. Sec. 1, Ch. 199, L. 1963.

Amendments

The 1959 amendment in subd. (a) deleted the words "except as hereinafter provided," which appeared after the words "herein defined"; deleted from the end of the subdivision the words "by such person" and added all of subd. (b) reading

(b) In the case of a nonresident officer or director of a corporation doing business in this state, such salaries, fees, or other

compensation of such officer or director paid to him by such corporation shall be treated as income from sources within this state to the extent such salary, fee or other compensation is claimed as a deduction in computing income for Montana corporation license tax purposes, whether or not any personal services have been performed by such nonresident officer or director within this state."

The 1963 amendment deleted the subd. (b) that had been added by the 1959 amendment.

84-4903.1. Collection of tax from nonresidents—withholding authorized. In order to insure collection, in the manner and to the extent provided by section 84-4907, Revised Codes of Montana, 1947, as amended, of the income tax imposed upon the income of nonresidents by section 84-4903, Revised Codes of Montana, 1947, withholding of portions of certain payments to nonresidents and payment of the amounts so withheld to the state board of equalization as partial payment of such nonresidents' income tax in the manner set forth in the following sections shall be, and hereby is, required.

History: En. Sec. 1, Ch. 208, L. 1959.

Title of Act

An act to insure collection of the Montana state income tax upon the income of nonresidents, and to provide for withholding of portions of certain payments to nonresidents and payment of the amounts so withheld to the state board of equalization as partial payment of such nonresidents' income tax; to provide that certain types of payments shall not be subject to

withholding under this act; to provide for the method of collection and payment of amounts withheld; to provide for and define the duties of withholding agents under the act and penalties for failure of such agents to withhold or pay; and to provide for the powers and duties of the state board of equalization, county assessors, and county clerks and recorders under this act, and providing a saving clause.

84-4903.2. Deducting and withholding from payments to nonresidents—transmittal to state board of equalization—additional reports and information—rules and regulations—order for withholding payments. Every person, firm, corporation, association, partnership, or fiduciary doing business in or having income in the state of Montana, including the state of Montana, its agencies, and instrumentalities, counties, cities, towns, school districts, and municipal corporations of every kind, which knowingly makes payments of any kind to any nonresident of the state of Montana for services performed within the state of Montana other than those described in sections 84-4942 and 84-4943, Revised Codes of Montana, 1947, or for casual sales of property, either real or personal, located within the state of Montana, or any prizes or winnings payable from or within the state of Montana, or hiring or having a contract with any nonresident of a temporary nature to be carried out within the state of Montana, shall deduct from such payment or payments an amount to be set by the state board of equalization, not to exceed three per cent (3%) of such payment, which shall be transmitted by him to the state board of equalization as partial payment of such nonresident's income tax.

Upon finding that reports and information, in addition to that now required by law or regulation, should be filed in order to insure the collection of Montana state income tax on payment to nonresidents for leases, rentals or royalties derived from property located within the state of Montana, the board of equalization may adopt rules and regulations requiring the filing of such reports and information.

If upon notice to a nonresident taxpayer and hearing the board finds that withholding should be made on payments to the taxpayer for leases, rentals or royalties derived from property located within the state of Montana in order to insure the collection of Montana state income tax, it may order withholding on such payments in an amount equal to the tax liability of the nonresident taxpayer. Such order shall be binding upon all withholding agents as hereinafter described who shall receive a copy thereof, by mail or otherwise, until such agent shall receive a copy of an order of the board terminating such withholdings as to the nonresident taxpayer.

History: En. Sec. 2, Ch. 208, L. 1959; amd. Sec. 1, Ch. 154, L. 1961.

Amendment

The 1961 amendment after the words "located within the state of Montana"

in the first paragraph deleted the words "or for leases, rentals or royalties derived from property located within the state of Montana"; and added the second and third paragraphs.

84-4903.3. Exceptions from withholding requirements. Payments made for livestock or agricultural products raised or grown outside Montana, and sold at a market within this state shall not be subject to withholding under this act.

History: En. Sec. 3, Ch. 208, L. 1959.

84-4903.4. Withholding agent. Every such person, firm, etc. required to withhold such payments under the provisions of section 2 [84-4903.2] above preceding shall be known as a withholding agent within the meaning of this act.

History: En. Sec. 4, Ch. 208, L. 1959.

84-4903.5. Quarterly payment by withholding agent—exception. Withholding agents required to deduct and withhold tax payments under the provisions of section 2 (84-4903.2, Revised Codes of Montana, 1947) shall remit such payments quarterly to the state board of equalization for each quarterly period on or before the last day of the month following the close of such quarterly period.

Provided, however, that when the aggregate total amount of the tax withheld under the provisions of section 2 (84-4903.2, Revised Codes of Montana, 1947) shall amount to less than ten dollars (\$10.00) in each quarterly period of any year, such withholding agent shall not be required to file the quarterly returns or to make the quarterly payments last hereinabove provided for, but in lieu thereof such withholding agent shall, on or before February fifteenth of the year next succeeding that in which such payments were withheld, file an annual return in such form as shall be determined by the board, and shall pay therewith the amount required by this act to be deducted and withheld by such withholding agent from all payments paid during the preceding calendar year.

History: En. Sec. 5, Ch. 208, L. 1959; amd. Sec. 2, Ch. 154, L. 1961.

Amendment

The 1961 amendment in each of the paragraphs adopted in parentheses a reference to section 84-4903.2 which had been inserted by the compiler in brack-

ets, and after each of such references, inserted the words "Revised Codes of Montana, 1947"; in the first paragraph, after the words "state board of equalization," deleted "beginning July 1st, 1959 and" and, after the words "quarterly period," deleted the word "thereafter."

84-4903.6. Modification of withholding provisions. The conditions set forth in section 2 [84-4903.2] may be modified by the state board of equalization provided:

(a) The withholding agent shall insure the board by bond or deposit of securities subject to approval by the state treasurer, or cash which shall not bear interest, that he will comply with the withholding requirements insofar as his obligation as a withholding agent is concerned, or

(b) The nonresident taxpayer shall furnish to the state board of equalization under such rules and regulations as it may prescribe an affidavit as to the correct amount of taxable income subject to the provisions of this act, in which case the state board of equalization shall determine the amount to be withheld.

History: En. Sec. 6, Ch. 208, L. 1959.

84-4903.7. Failure to withhold or pay—penalties. If any withholding agent knowingly fails to withhold or pay to the state board of equalization any sums required by this act, or any order made pursuant to this act, to be withheld and paid, the same additions to the amount of such tax shall be imposed and added as those specified in section 84-4924, Revised Codes of Montana, 1947, with respect to failure to make a return of income or to pay any income tax; and any individual, corporation or partnership, or any officer or employee thereof, who, with intent to evade any tax or any requirement of this act, or who, with like intent, files or supplies any false or fraudulent statement or information, shall be liable to the same penalties as those imposed by section 84-4924, Revised Codes of Montana, 1947, with respect to filing or supplying any false or fraudulent statement or information with respect to income taxes.

History: En. Sec. 7, Ch. 208, L. 1959; amd. Sec. 3, Ch. 154, L. 1961.

Amendment

The 1961 amendment after the words "required by this act" inserted ", or any order made pursuant to this act."

Separability Clause

Section 4 of Ch. 154, Laws 1961 read "If any portion, section, subsection, para-

graph, sentence, clause or phrase of this act is for any reason held to be unconstitutional such decision shall not affect the remainder of the act."

Repealing Clause

Section 5 of Ch. 154, Laws 1961 repealed all acts and parts of acts in conflict therewith.

84-4903.8. Board may require withholding agent to make return and pay tax at any time. If the state board of equalization in any case has reason to believe that the collection of the tax provided for in this section is in jeopardy, it may require the withholding agent to make such return and pay such tax at any time.

History: En. Sec. 8, Ch. 208, L. 1959.

84-4903.9. Amounts withheld as lien against agent—priority. In addition to the penalties above-provided, if any withholding agent shall withhold any sums required to be withheld and paid over to the state board of equalization under this act, the amount of the sums so withheld shall constitute a first lien against all property, real and personal, tangible and intangible, of the withholding agent, which lien shall take precedence over all others, it being the intention of this act that the funds withheld by the withholding agent shall be considered funds held in trust by the withholding agent.

History: En. Sec. 9, Ch. 208, L. 1959.

84-4903.10. Rights of nonresident. No nonresident taxpayer shall have any right of action against a withholding agent on account of any moneys withheld and paid over to the state board of equalization under this act, but nothing in this section shall be construed as removing any legal rights or remedies of such nonresident taxpayer for return of any tax erroneously or illegally collected or for any refund that may be due him.

For the purposes of any contract, leases or other obligations, any sum withheld pursuant to this act shall be deemed to have been paid to the nonresident at the time of such withholding.

History: En. Sec. 10, Ch. 208, L. 1959.

84-4903.11. Nonresident ad valorem taxpayers—list—duty of county assessor. It shall be the duty of the county assessor of every county in this state to prepare annually a list showing the names and addresses of all nonresident ad valorem taxpayers in his county, as shown on the current assessment roll, and forward such list to the state board of equalization after the completion of the roll on the second Monday in July but not later than September thirtieth of each year.

History: En. Sec. 11, Ch. 208, L. 1959.

84-4903.12. List of loans made to nonresidents upon grain for which chattel mortgage filed—duty of clerk to prepare. It shall be the duty of the county clerk and recorder of every county in this state to prepare monthly a list showing such information as may be prescribed by the state board of equalization with respect to each loan made to a nonresident upon grain for which a chattel mortgage has been filed in his office and such list shall be mailed to the state board of equalization not later than the tenth day of the month following.

History: En. Sec. 12, Ch. 208, L. 1959.

84-4903.13. Rules and regulations. The state board of equalization is hereby empowered to make all necessary rules and regulations for carrying out and enforcing this act.

History: En. Sec. 13, Ch. 208, L. 1959.

Separability Clause

Section 14 of Ch. 208, Laws 1959 read
"If any portion, section, subsection, para-

graph, sentence, clause or phrase of this act is for any reason held to be unconstitutional which [such] decision shall not affect the remainder of the act."

84-4905. (2295.5) Adjusted gross income. Adjusted gross income shall be the taxpayer's adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section shall be labeled or amended and in addition includes interest on all state, county, and municipal bonds, but does not include the following which are exempt from taxation under this act:

- (a) Interest on United States obligations.
- (b) Dividends received from stock held in national banks when such banks have their situs in Montana.
- (c) All benefits received under the federal employees retirement act not in excess of thirty-six hundred dollars (\$3,600).

History: En. Sec. 5, Ch. 181, L. 1933; amd. Sec. 1, Ch. 167, L. 1947; amd. Sec. 1, Ch. 260, L. 1955; amd. Sec. 1, Ch. 58, L. 1963.

Amendment

The 1963 amendment added clause (c).

DECISIONS UNDER FORMER LAW

Breeding Animals Not a Capital Asset

In 1951 no preferential treatment was accorded by any state statute to gains from the sale or exchange of breeding animals or any other property held for productive use in a trade or business. (Sec. 1, Ch. 148, Laws 1935, R. C. M. 1947, 84-4934, Repealed by Sec. 15, Ch.

260, Laws 1955.) In re Armstrong's Estate, 133 M 328, 323 P 2d 595, 596.

Under the former statute requiring that the final closing return of a decedent be made on an inventory basis the same as fixed for inheritance tax purposes, Sec. 1, Ch. 167, Laws 1947, unsold breeding animals valued in inventory were not to

be treated as a capital asset but were to be treated as property held for sale in computing taxable income. In re Armstrong's Estate, 133 M 328, 323 P 2d 595, 596.

Constitutionality

This section, before the 1955 amendment, was not unconstitutional as taxing something which was not income or taxing accretion in capital asset items. State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 228, 231.

Not Retrospective

In the absence of any language in the 1955 Act warranting a retrospective application the court could not decide a 1951 tax case in accordance with federal stat-

utes and decisions. In re Armstrong's Estate, 133 M 328, 323 P 2d 595, 597.

Purpose of Section

In enacting this section, before the 1955 amendment, the legislature was seeking tax equality. State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 230.

Valuation of Closing Inventory

Valuation of closing inventory of estate of decedent under this section, before the 1955 amendment, by three unbiased appraisers was required by sections 91-2201, 91-2202. State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 231.

84-4906. (2295.6) Deductions allowed in computing net income.

References

Cited in State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 231.

84-4907. (2295.7) Nonresident taxpayers. In the case of a taxpayer other than a resident of this state, adjusted gross income includes the entire amount of adjusted gross income from sources within this state, but shall not include income from annuities, interest on bank deposits, interest on bonds, notes or other interest-bearing obligations, or dividends on stock of corporations; except to the extent to which the same shall be a part of income from any business, trade, profession or occupation carried on in this state. Adjusted gross income from sources within and without this state shall be allocated and apportioned under rules and regulations prescribed by the state board of equalization.

In the case of a taxpayer other than a resident of this state, the deductions allowed in computing net income shall be prorated according to the ratio the taxpayer's Montana adjusted gross income bears to his federal adjusted gross income.

History: En. Sec. 7, Ch. 181, L. 1933; amd. Sec. 1, Ch. 28, L. 1937; amd. Sec. 1, Ch. 7, L. 1939; amd. Sec. 1, Ch. 63, L. 1949; amd. Sec. 1, Ch. 17, L. 1951; amd. Sec. 1, Ch. 111, L. 1953; amd. Sec. 3, Ch. 260, L. 1955; amd. Sec. 1, Ch. 237, L. 1963.

Amendment

The 1963 amendment substituted "the entire amount of adjusted gross income" near the beginning of the section for "only the adjusted gross income"; inserted "income from" before "annuities" in the first sentence of the first paragraph; made a minor change in phrasology in the latter part of the first sentence of the first paragraph; added the second sentence to the first paragraph; and substituted "prorated according to the ratio the taxpayer's Montana adjusted gross income bears to his federal adjusted gross income" at the end

of the second paragraph for "allowed only if and to the extent that they are connected with income arising from sources within the state, and with reference to which a nonresident taxpayer is taxable under this act; and the proper apportionment and allocation of the deductions with respect to sources of income within and without this state shall be determined under rules and regulations to be prescribed by the state board of equalization."

Effective Date

Section 2 of Ch. 237, Laws 1963 read "This act is effective as to taxable years ending on and after December 31, 1963."

References

Cited in State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 228.

84-4907.1. Veterans' bonus—exemption from income tax law. All payments made under the Korean Bonus Law and the Veterans' Bonus Law, are hereby exempt from taxation under the income tax laws of the state of Montana, and any income tax which has been or may hereafter be paid on income received from this source shall be considered an overpayment and shall be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the board, in the same manner as other income tax refund claims are paid.

History: En. Sec. 1, Ch. 43, L. 1953; amd. Sec. 1, Ch. 227, L. 1957.

Amendment

The 1957 amendment inserted the words "under the Korean Bonus Law and the" and deleted the words "pursuant to Initia-

tive No. 54, more commonly known as the" which appeared before the words "Veterans' Bonus Law" and deleted the words "the effective date of which was December 6, 1950," which appeared after the words "Veterans' Bonus Law."

84-4910. (2295.10) Exemptions. (a) Allowance of Personal Exemption. In the case of an individual, the exemptions provided by this section shall be allowed as deductions in computing taxable income.

(b) Taxpayer and Spouse. An exemption of six hundred dollars (\$600.00) for the taxpayer; and an additional exemption of six hundred dollars (\$600.00) for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(c) Additional Exemption for Taxpayer or Spouse Aged Sixty-five (65) or More. (1) For taxpayer. An additional exemption of six hundred dollars (\$600.00) for the taxpayer if he has attained the age of sixty-five (65) before the close of his taxable year.

(2) For spouse. An additional exemption of six hundred dollars (\$600.00) for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse has attained the age of sixty-five (65) before the close of such taxable year and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(d) Additional Exemption for Blindness of Taxpayer or Spouse. (1) For taxpayer. An additional exemption of six hundred dollars (\$600.00) for the taxpayer if he is blind at the close of his taxable year.

(2) For spouse. An additional exemption of six hundred dollars (\$600.00) for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this paragraph, the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer; except that if the spouse dies during such taxable year such determination shall be made as of the time of such death.

(3) Blindness defined. For purposes of this subsection, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the field(s) of vision such that

the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(e) Additional Exemption for Dependents. (1) In general. An exemption of six hundred dollars (\$600.00) for each dependent:

(A) Whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than six hundred dollars (\$600.00), or

(B) Who is a child of the taxpayer and who (i) has not attained the age of nineteen (19) years at the close of the calendar year in which the taxable year of the taxpayer begins, or (ii) is a student.

(2) Exemption denied in case of certain married dependents. No exemption shall be allowed under this subsection for any dependent who has made a joint return with his spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(3) Child defined. For purposes of paragraph (1) (B), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

(4) Student and educational institution defined. For purposes of paragraph (1) (B) (ii), the term "student" means an individual who during each of five (5) calendar months during the calendar year in which the taxable year of the taxpayer begins

(A) Is a full time student at an educational institution; or

(B) Is pursuing a full time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this paragraph, the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(f) General Definition. For purposes of this section, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer:

- (1) A son or daughter of the taxpayer, or a descendant of either,
- (2) A stepson or stepdaughter of the taxpayer,
- (3) A brother, sister, stepbrother, or stepsister of the taxpayer,
- (4) The father or mother of the taxpayer, or an ancestor of either,
- (5) A stepfather or stepmother of the taxpayer,
- (6) A son or daughter of a brother or sister of the taxpayer,
- (7) A brother or sister of the father or mother of the taxpayer,
- (8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer,

(9) An individual who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer, and is a member of the taxpayer's household, or

(10) An individual who

(A) is a descendant of a brother or sister of the father or mother of the taxpayer,

(B) for the taxable year of the taxpayer received institutional care required by reason of a physical or mental disability, and

(C) before receiving such institutional care, was a member of the same household as the taxpayer.

(g) Rules Relating to General Definition. For purposes of this section: *doesn't appear acts*

(1) The terms "brother" and "sister" include a brother or sister by the half blood.

(2) In determining whether any of the relationships specified in subsection (a) or paragraph (1) of this subsection exists, a legally adopted child of an individual shall be treated as a child of such individual by blood.

(h) Determination of Marital Status. For purposes of this part

(1) The determination of whether an individual is married shall be made as of the close of his taxable year; except that if his spouse dies during his taxable year such determination shall be made as of the time of such death; and

(2) An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(i) Proration of exemption deduction in the case of a nonresident taxpayer

(1) The exemption deduction shall be prorated according to the ratio the taxpayer's Montana adjusted gross income bears to his federal adjusted gross income.

History: En. Sec. 10, Ch. 181, L. 1933; amd. Sec. 1, Ch. 29, L. 1941; amd. Sec. 1, Ch. 196, L. 1949; amd. Sec. 1, Ch. 233, L. 1957; amd. Sec. 3, Ch. 253, L. 1959; amd. Sec. 2, Ch. 199, L. 1963.

The 1963 amendment inserted "if a separate return is made by the taxpayer, and" in subd. (b), subd. (c) (2), and subd. (d) (2); inserted "has no gross income and" in subd. (b), subd. (c) (2), and subd. (d) (2); inserted "deduction" after "exemption" in subd. (i) and (i) (1); and made minor changes in phraseology and paragraphing.

Amendments

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

The 1959 amendment, in the heading for subd. (a), substituted "personal exemption" for "deductions"; in subd. (b) deleted the words "if a separate or joint return is made by the taxpayer" which appeared after the words "spouse of the taxpayer"; in subds. (c) (2) and (d) (2) deleted the words "if a separate return is made by the taxpayer" which appeared in each instance after the words "spouse of the taxpayer"; in subd. (d) (2) deleted the words "has no gross income" which appeared before the words "is not a dependent" and added all of subd. (i).

Repealing Clause

Section 2 of Ch. 233, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 233, Laws 1957 read "This act shall be effective as to all taxable periods ending on or after December 31, 1957, whether on the calendar or fiscal year basis."

84-4911. (2295.11) Income tax involving partnership — partnership statements required. Individuals carrying on a business in partnership shall be liable for income tax only in their individual capacity. There shall be included, in computing the net income of each partner, his distributive share, whether distributed or not, of the net income of the partnership for the taxable year, or, if his net income for such taxable year is computed

upon the basis of a period different from that upon the basis for which the net income of the partnership is computed, then there shall be included his distributive share of the net income of the partnership for any accounting period of the partnership ending within the fiscal or calendar year upon the basis of which the partner's net income is computed. Taxpayers who are members of partnerships are required by the department to furnish a copy of their federal partnership return.

History: En. Sec. 11, Ch. 181, L. 1933; amd. Sec. 5, Ch. 260, L. 1955; amd. Sec. 4, Ch. 253, L. 1959.

Amendment

The 1959 amendment substituted the present last sentence for two sentences which read "Taxpayers who are members

of partnerships may be required by the department to make a return stating the gross receipts and net gains or profits of the partnership for any taxable year. The net income of the partnership shall be computed in the same manner and on the same basis as provided in computing the net income of individuals."

84-4914. (2295.14) Returns and payment of tax—penalty and interest—refunds—credits. (1) Every single individual and every married individual filing a separate return, having a gross income for the taxable year of six hundred dollars (\$600.00) or over and married individuals filing a joint return having a combined gross income for the taxable year of twelve hundred dollars (\$1,200.00) or over shall be liable for a return to be filed on such forms and according to such rules and regulations as the board of equalization may prescribe.

(2) In accordance with instructions set forth by the board, every taxpayer who is married and living with husband or wife and is required to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several.

(3) If any such taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

(4) All taxpayers, including, but not limited to those subject to the provisions of sections 84-4939, and 84-4943 as amended shall compute the amount of income tax payable and shall at the time of filing the return required by this act, pay to the board any balance of income tax remaining unpaid after crediting the amount withheld as provided by section 84-4943 as amended and/or any payment made by reason of an estimated tax return provided for in section 84-4939 as amended, provided however, the tax so computed is greater by one dollar (\$1.00) than the amount withheld and/or paid by estimated return as provided in this act.

If the amount of tax withheld and/or payment of estimated tax exceeds by more than one dollar (\$1.00) the amount of the income tax as computed, the taxpayer shall be entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the board shall examine and verify the tax.

(6) If the amount of tax as verified is greater than the amount therefore paid, the excess shall be paid by the taxpayer to the board within thirty (30) days after notice of the amount of the tax as computed with

interest added at the rate of six per centum (6%) per annum or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within thirty (30) days after the first notice of the amount is mailed to the taxpayer.

If payment is not made within thirty (30) days or if the understatement is due to negligence on the part of the taxpayer, but without fraud, there shall be added to the amount of the deficiency five per centum (5%) thereof, provided, however, that no deficiency penalty shall be less than two dollars (\$2.00). Interest will be computed at the rate of six per centum (6%) per annum or fraction thereof on the additional assessment. Except as otherwise expressly provided in this subdivision, the interest shall in all cases be computed from the date the return and tax was originally due (as distinguished from the due date as it may have been extended) to the date of payment.

If the time for filing a return is extended, the taxpayer shall pay in addition, interest thereon at the rate of six per centum (6%) per annum from the time when the return was originally required to be filed to the time of payment.

History: En. Sec. 14, Ch. 181, L. 1933; amd. Sec. 1, Ch. 34, L. 1949; amd. Sec. 8, Ch. 260, L. 1955; amd. Sec. 2, Ch. 227, L. 1957; amd. Sec. 5, Ch. 253, L. 1959; amd. Sec. 1, Ch. 201, L. 1963.

Amendments

The 1957 amendment designated the former section as subsection (1); reduced the minimum amounts requiring the filing of returns from \$1,000 to \$600 for single persons, from \$2,000 to \$1,200 for married persons, and from \$2,500 to \$1,200 gross income; substituted "shall be liable for an income tax return, to be filed on such forms and according to instructions set forth by the board" at the end of the first sentence of subsection (1) for "shall make a return stating specifically the items of his gross income and the deductions and credits allowed by this act"; deleted from the first paragraph of subsection (1) a second sentence, for text of which see parent volume; and added new subsections (2), (3), and (4) (now subsections (4), (5), and (6)).

The 1959 amendment substituted "taxpayer" for "person" in three places in subsection (1) now subsections (1) and (2); substituted "gross income" for "net income" near the beginning of subsection (1); and deleted the words "or a gross income for the taxable year of twelve hundred dollars (\$1,200.00) or over, regardless of the amount of his net income" which followed "head of a family" in subsection (1).

The 1963 amendment rewrote the former first paragraph of subsection (1); inserted a new subsection (2); designated the former second paragraph of subsection (1) as subsection (3); redesignated former subsections (2), (3), and (4) as (4), (5), and (6); substituted "six per centum (6%) per annum" for "one per centum (1%) per month" in the first sentence of the first paragraph and the second sentence of the second paragraph of present subsection (6); and inserted "(as distinguished from the due date as it may have been extended)" near the end of the second paragraph of present subsection (6).

84-4915. (2295.15) Exemption allowed nonresident—effect of changing resident status. If a taxpayer changes his status from that of resident to that of nonresident, or from that of nonresident to that of resident, during the taxable year, he shall file a return covering the fraction of the year during which he was a resident. The exemptions provided in section 84-4910 shall be prorated on the ratio the Montana adjusted gross income bears to federal adjusted gross income. A Montana citizen moving out of the state; abandoning his residence in the state and establishing a residence elsewhere, must file a return on the fractional basis. If he obtains em-

ployment outside the state, without abandoning his Montana residence then income from such employment is taxable in Montana.

History: En. Sec. 15, Ch. 181, L. 1933; amd. Sec. 9, Ch. 260, L. 1955; amd. Sec. 6, Ch. 253, L. 1959.

tence substituted "on the ratio the Montana adjusted gross income bears to federal adjusted gross income" for "according to time in this state."

Amendment

The 1959 amendment in the second sen-

84-4919. (2295.19) Time for filing—affidavit—forms.

References

Cited or applied in *Stewart v. State*, 135 M 323, 340 P 2d 151, 152.

84-4920. (2295.20) Revision of return—time for determining tax, etc.

Construction Prior to Amendment

The provision of this section, before the 1955 amendment, commanding a particular act to be done for the protection of the taxpayer, viz., assessment within three years, must be construed in favor of the taxpayer. *State ex rel. Anderson v. State Board of Equalization*, 133 M 8, 319 P 2d 221, 224.

This section, before the 1955 amendment did not constitute a statute of limitations, but rather a limitation upon the authority of the state board of equalization to reassess returns after the expira-

tion of three years from the date the return is made. *State ex rel. Anderson v. State Board of Equalization*, 133 M 8, 319 P 2d 221, 226.

Limitation on Reassessment

Although this section does not constitute a statute of limitations, it is a limitation upon the authority of the board of equalization to reassess returns after the expiration of three years from the date the return was filed. *State ex rel. Conn v. Robinson*, 133 M 549, 327 P 2d 390, 391.

84-4922. (2295.22) Revision—application—hearing—adjustment. If an application for revision be filed with the board by a taxpayer within five (5) years from the original due date of the return the board shall grant a hearing thereon, and if it is made to appear upon any such hearing by evidence submitted to it or otherwise, that any such computation includes taxes or other charges which could not have been lawfully demanded, or that payment has been illegally made or exacted of any such amount so computed, the board shall settle the same according to law and the facts, and adjust the computation of taxes accordingly, and shall send notice of its determination thereon to the taxpayer.

History: En. Sec. 22, Ch. 181, L. 1933; amd. Sec. 1, Ch. 58, L. 1955; amd. Sec. 2, Ch. 201, L. 1963.

Amendment

The 1963 amendment extended the filing period from three to five years after the due date of the return; and deleted the words "or if the tax of such taxpayer has been recomputed, then from the time of such recomputation" which appeared after "due date of the return."

Filing of Claim

Respondent paid additional tax under protest on June 12, 1953. Within the two years granted by this section, he applied for a revision, filing claim on July 24, 1954, setting forth the contended invalidity of the assessment. The claim was filed on a form provided by the board of equalization for refund of tax illegally collected. This was a sufficient compliance with the statute. *State ex rel. Conn v. Robinson*, 133 M 549, 327 P 2d 390, 391.

84-4923. (2295.23) Repealed.

Repeal

This section (Sec. 23, Ch. 181, L. 1933; amd. Sec. 2, Ch. 58, L. 1955), relating to

review of board's findings on application for revision, was repealed by Sec. 2, Ch. 212, Laws 1957.

84-4923.1. Review by court. The determination of the state board of equalization may be reviewed in the district court for Lewis and Clark county or the county in which the taxpayer resides or has his principal office or place of business, by a complaint filed by the taxpayer against the state board of equalization within six (6) months after the receipt of notice of the decision of the state board of equalization. Upon the serving of summons upon the state board of equalization as in civil action, the cause shall proceed as other civil cases. Service upon the state board of equalization may be made by serving one copy upon the secretary of the state board of equalization or one copy upon the chairman of the state board of equalization. The remedies provided by this chapter for the collection of the tax shall be stayed and no assessment, distraint or proceedings in court for collection of the taxes shall be made, begun or prosecuted until ninety (90) days after such court action is finally determined. From any determination of such court, an appeal to the supreme court may be taken by either party.

History: En. Sec. 1, Ch. 212, L. 1957.

Codes of Montana, 1947, and containing a repealing clause.

Title of Act

An act providing for review by the court of any determination of the board of equalization in respect to income taxes and repealing section 84-4923, Revised

Repealing Clause

Section 2 of Ch. 212, Laws 1957 repealed section 84-4923 of the Revised Codes of Montana, 1947, and all acts and parts of acts in conflict therewith.

DECISIONS UNDER FORMER LAW

Review of Reassessment

Where board of equalization rejected claim of taxpayer, on August 18, 1954, for return of illegally collected tax, it constituted the determination of the board upon the application for revision made by respondent and was reviewable by district

court under Sec. 23, Ch. 181, Laws 1933, where respondent applied for writ of certiorari on September 11, 1954, within the 30 day limitation provided in section 23. State ex rel. Conn v. Robinson, 133 M 549, 327 P 2d 390, 391.

84-4924. (2295.24) Penalties for violations of act. (1) If any person, without intent to evade any tax imposed by this act, fails to make a return of income or pay any tax if one is due at the time required by or under the provisions of this act, there shall be added to the tax an additional amount equal to five (5) per centum thereof, but not less than two dollars (\$2.00), unless it is shown that the failure was due to reasonable cause and not due to neglect. Interest at the rate of six per centum (6%) per annum shall be added to the tax for the entire period it remains unpaid.

(2) to (4). * * * [Same as parent volume.] ✓

History: En. Sec. 24, Ch. 181, L. 1933; amd. Sec. 1, Ch. 163, L. 1955; amd. Sec. 3, Ch. 201, L. 1963.

for each month or fraction of a month during which the tax remains unpaid."

Amendment

The 1963 amendment substituted the latter part of subsection (1), beginning with the words "but not less than two dollars", for "but such additional amount shall in no case be less than two dollars (\$2.00), and interest at one (1) per centum

Effective Date

Section 4 of Ch. 201, Laws 1963 read "This act is effective as to taxable years ending on and after December 31, 1962."

Constitutionality

The double penalty imposed under subd. (2) of this section, before the 1955

amendment, did not violate sections 20, 27, article III, of the Montana Constitution as an excessive fine or the taking of property without due process of law. State ex rel. Hardy v. State Board of Equalization, 133 M 43, 319 P 2d 1061, 1063, 1065.

Inadvertent Failure to Pay when Filing Return

The provision of this section, prior to

the 1955 amendment, that any person failing to pay tax on due date was allowed 60 days in which to pay tax with only a 5% penalty did not prevent assessment of the 100% penalty after the termination of such period, notwithstanding the fact that the taxpayer failed to include payment due to mistake, inadvertence, and excusable neglect. Stewart v. State, 135 M 323, 340 P 2d 151.

84-4925. (2295.25) Repealed.

Repeal

This section (Sec. 25, Ch. 181, L. 1933; amd. Sec. 1, Ch. 78, L. 1951), relating to

payment, penalty, interest, and refund of excess payment of tax, was repealed by Sec. 4, Ch. 227, Laws 1957.

84-4928. (2295.26) Levy upon and sale of property, etc.

References

Cited or applied in Stewart v. State, 135 M 323, 340 P 2d 151, 154.

84-4937. Credit allowed resident taxpayers for income taxes imposed by foreign states. Subject to the following conditions, residents of this state shall be allowed a credit against the taxes imposed by this act for income taxes imposed by and paid to another state or country on income taxable under this act.

(1) The credit shall be allowed only for taxes paid to such other state on income derived from sources within such state which is taxable under the laws of such state or country irrespective of the residence or domicile of the recipient;

(2) The credit shall not be allowed if such other state or country allows residents of this state a credit against the taxes imposed by such state for taxes paid or payable under this act;

(3) The allowable credit shall be computed by formula to be prescribed by the board.

History: En. Sec. 2, Ch. 28, L. 1941; amd. Sec. 7, Ch. 253, L. 1959.

Amendment

The 1959 amendment completely revised this section. For section prior to amendment see parent volume.

Severability Clause

Section 8 of Ch. 253, Laws 1959 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, clauses or parts be held un-

constitutional or void the remainder of this act shall continue in full force and effect."

Repealing Clause

Section 9 of Ch. 253, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 10 of Ch. 253, Laws 1959 read "The provisions of this act shall apply to taxable years ending after June 30, 1959."

84-4943. Deduction and withholding of tax from wages—amount. Every employer making payment of wages shall deduct and withhold upon such wages, a tax determined in accordance with the withholding tax tables which shall be prepared and issued by the board. Persons on active service as a member of the armed forces of the United States shall not be subject to the provisions of this section.

History: En. Sec. 2, Ch. 246, L. 1955; amd. Sec. 3, Ch. 227, L. 1957.

Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

Repealing Clause

Section 4 of Ch. 227, Laws 1957 read "That section 84-4925 of the Revised Codes of Montana, 1947, as amended by section 1 of chapter 78 of the Laws of 1951, section 84-4944 of the Revised Codes of Montana, 1947, being section 3 of

chapter 246 of the Laws of 1955, section 84-4949 of the Revised Codes of Montana, 1947, being section 3 of chapter 246 of the Laws of 1955, section 84-4952 of the Revised Codes of Montana, 1947, being section 11 of chapter 246 of the Laws of 1955, and all acts and parts of acts in conflict herewith are hereby repealed."

Effective Date

Section 5 of Ch. 227, Laws 1957 read "This act shall be effective as to all taxable periods ending on or after December 31, 1957, whether on the calendar or fiscal year basis."

84-4944. Repealed.

Repeal

This section (Sec. 3, Ch. 246, L. 1955), relating to the adjustment and amount of

wages exempt, was repealed by Sec. 4, Ch. 227, Laws 1957.

84-4949. Repealed.

Repeal

This section (Sec. 8, Ch. 246, L. 1955),

relating to the short form return, was repealed by Sec. 4, Ch. 227, Laws 1957.

84-4952. Repealed.

Repeal

This section (Sec. 11, Ch. 246, L. 1955), relating to including withholding tax de-

ductions in gross income, was repealed by Sec. 4, Ch. 227, Laws 1957.

84-4953. Repealed.

Repeal

This section (Sec. 12, Ch. 246, L. 1955), relating to the income tax withholding

fund, was repealed by Sec. 8, Ch. 126, Laws 1963.

84-4956. Credits and refunds. If the board of equalization discovers from the examination of a return, or upon claim duly filed by a taxpayer, or upon final judgment of a court, that the amount of income tax is in excess of the amount due, or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment shall be credited against any income tax, penalty or interest, then due from the taxpayer, and the balance of such excess shall be refunded to the taxpayer.

Effective with taxable years ending on or after December 31, 1959, no such credit or refund shall be allowed or made after five (5) years from the date prescribed by statute for filing the return, unless before the expiration of such period a claim therefor is filed by the taxpayer, or the board of equalization has determined the existence of the overpayment and has approved the refund or credit thereof. Within six (6) months after a claim for refund is filed the state board of equalization shall examine said claim and either approve or disapprove it. If said claim is approved, the credit or refund shall be made to the taxpayer within sixty (60) days after the claim is approved; if the claim is disallowed, the state board of equalization shall so notify the said taxpayer and shall grant a hearing thereon upon proper application by the taxpayer. If the board disapproves a claim for refund, review of the determination of the board may be had as otherwise provided in this chapter.

Except as hereinafter provided for, effective with taxable years ending on or after December 31, 1962, interest shall be allowed on overpayments at the rate of six per cent (6%) per annum from the due date of the return or from the date of the overpayment (whichever date is later) to the date the board of equalization approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment shall be deemed to be the date on which the return for the taxable year was due. No interest shall accrue on an overpayment if the taxpayer elects to have it applied to his estimated tax for the succeeding taxable year; nor shall interest accrue during any period the processing of a claim for refund is delayed more than thirty (30) days by reason of failure of the taxpayer to furnish information requested by the state board of equalization for the purpose of verifying the amount of the overpayment. No interest shall be allowed (a) if the overpayment is refunded within six (6) months from the date the return is due or the date the return is filed, whichever date is later; or (b) if the overpayment results from the carryback of a net operating loss; or (c) if the amount of interest is less than one dollar (\$1.00). An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability, or one reasonably assumed to be imposed by this law, shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 1, Ch. 138, L. 1957; amd. Sec. 3, Ch. 199, L. 1963.

Title of Act

An act relating to credits and refunds; providing for the period within which claim must be made; providing for a hearing upon the claim and for review by the court, by the taxpayer and containing a repealing clause.

Amendment

The 1963 amendment substituted the first paragraph for a paragraph reading, "Where there has been an overpayment of any income tax imposed by this chapter, the amount of such overpayment shall be credited against any income tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer"; inserted the words "Effective with taxable years end-

ing on or after December 31, 1959" at the beginning of the second paragraph; substituted "five (5) years from the date prescribed by statute for filing the return" in the first sentence of the second paragraph for "three (3) years from the time the tax was paid"; added to the first sentence of the second paragraph the words "or the board of equalization has determined the existence of the overpayment and has approved the refund or credit thereof"; substituted "upon proper application by the taxpayer" for "before the state board of equalization" at the end of the third sentence of the second paragraph; made minor changes in phraseology; and added the third paragraph.

Repealing Clause

Section 2 of Ch. 138, Laws 1957 repealed all acts and parts of acts in conflict therewith.

84-4957. Repealed.

Repeal

This section (Sec. 1, Ch. 211, L. 1957), relating to the income tax refund account,

was repealed by Sec. 8, Ch. 126, Laws 1963.

CHAPTER 52—LIVESTOCK TAXATION

Section 84-5211. Limitation of levies—livestock moneys.

84-5212. Use of moneys arising from taxes prescribed in preceding section.

84-5214. Levy for bounty moneys—use of proceeds.

84-5211. (2078) Limitation of levies—livestock moneys. The amount of such levy shall not in any event exceed one mill upon the assessed

valuation of sheep and one and one-half mills upon the assessed valuation of other livestock, which shall be levied to aid in the payment of the general expense of the livestock commission of Montana, including salaries, office expense, detective expense, expense of prosecution, travel, and all incidental expense, and a separate levy of not exceeding one and one-half mills on all livestock for the use of the livestock sanitary board to be placed in the earmarked revenue fund for the payment of indemnity for animals slaughtered, and for salaries and expenses incurred in investigating, controlling and suppressing diseases, including expenses of quarantine and salaries and expenses incurred for such purposes, and for laboratory maintenance; provided further that the state treasurer and state controller, at the written request of the livestock sanitary board shall set aside in a separate account in the earmarked revenue fund such moneys as may be available and requested, which moneys shall be expended only when the livestock sanitary board determines that a livestock disease emergency exists requiring its expenditure, and they shall then be expended for such purposes as the livestock sanitary board may order and direct.

History: En. Sec. 3, Ch. 127, L. 1915; re-en. Sec. 2078, R. C. M. 1921; amd. Sec. 1, Ch. 152, L. 1929; amd. Sec. 109, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund" in the first part of the section for "what shall be known as the state livestock sanitary board fund";

substituted "state controller" in the proviso for "state auditor"; substituted "in a separate account in the earmarked revenue fund such moneys" in the proviso for "and transfer from the state livestock sanitary board fund to what shall be known as the state livestock sanitary board emergency fund such funds"; and substituted "moneys" and "they" in the latter part of the proviso for "funds" and "it."

84-5212. (2079) Use of moneys arising from taxes prescribed in preceding section. The money received from the tax levied on sheep, as provided in the first part of the preceding section, shall be placed to the credit of the earmarked revenue fund, and shall be used to aid in the payment of the general expenses, salaries, office expense, detective expense, expenses of prosecution, travel, and other expense of the livestock commission, and the moneys received from the tax on all other stock, as provided in the preceding section, shall be placed to the credit of the earmarked revenue fund, to be used for like purposes for said livestock commission. The moneys received from the tax levied by the second division of the preceding section, shall be placed in the earmarked revenue fund, to be used by the livestock sanitary board for the payment of indemnity for animals slaughtered and for the payment of expenses in investigating and suppressing diseases, including quarantine and all expenses connected therewith.

History: En. Sec. 4, Ch. 127, L. 1915; re-en. Sec. 2079, R. C. M. 1921; amd. Sec. 89, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund" in the first part of the first sentence for "the sheep inspection and indemnity fund", in the latter

part of the first sentence for "the stock inspection and detective fund", and in the second sentence for "a fund to be known as the state livestock sanitary board fund"; substituted "livestock commission" in the first part of the first sentence for "board of sheep commissioners" and in the

latter part of the first sentence for "board of stock commissioners"; and substituted "the livestock sanitary board" in the second sentence for "said board."

84-5214. (2081) Levy for bounty moneys—use of proceeds. The state board of equalization of the state of Montana shall, under the authority of section 9, article XII of the constitution of Montana, and hereby, annually prescribe, make and levy an ad valorem tax on all livestock in the state of Montana for the purpose of protecting such livestock by all means of effective predatory animal destruction, extermination and control, including systematic hunting, trapping in planned campaigns, or otherwise, and payment of bounties, against destruction, depredation and injury by wild animals, whether on lands in private ownership, in the ownership of the state, or in the ownership of the United States, including open ranges and all lands in or of the public domain. The tax levy shall not exceed in any one (1) year (a) one and one-half ($1\frac{1}{2}$) mills on the assessed valuation of all sheep, and (b) one (1) mill on the assessed valuation of other livestock. The moneys received from such tax levies shall be transmitted monthly with other taxes for state purposes, by the county treasurer of each county, to the state treasury, and be by the state treasurer placed in and to the credit of the earmarked revenue fund (with other moneys in that fund under the provisions of section 46-1901) and such moneys shall thereafter be paid out only on claims duly and regularly presented to the Montana livestock commission, and thereafter approved by said commission, in accordance with the law applicable either to claims for bounties, when such claims are approved, or to claims for other expenditures necessary and proper for predatory animal control by other means and methods than payment of bounties, as may be determined by the Montana livestock commission. All such moneys shall be available for the payment of bounty claims and for expenditures in and for planned, seasonal, or other campaigns directed, or operated by the commission in co-operation with other agencies, for the systematic destruction, extermination and control of predatory wild animals, as may be determined by the commission and the advisory committee thereto. No claims shall be approved in excess of moneys available for such purposes, and no warrants shall be registered against such moneys.

History: En. Sec. 6, Ch. 127, L. 1915; re-en. Sec. 2081, R. C. M. 1921; amd. Sec. 4, Ch. 73, L. 1923; amd. Sec. 2, Ch. 152, L. 1929; amd. Sec. 1, Ch. 111, L. 1947; amd. Sec. 103, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund" in the third sentence for "the state bounty fund"; deleted "and thereafter to the state board of examiners" after "regularly presented to the Montana livestock commission" in the

third sentence; substituted "thereafter approved by said commission" in the third sentence for "approved, in turn, by each said commission and said board"; substituted "All such moneys" at the beginning of the fourth sentence for "All the moneys in said state bounty fund"; deleted "against the bounty fund" after "No claims" at the beginning of the last sentence; substituted "available for such purposes" in the last sentence for "in the fund"; and substituted "moneys" for "fund" at the end of the section.

CHAPTER 54—MINES TAXATION—GENERAL PROPERTY AND NET PROCEEDS TAX

Section 84-5403. Net proceeds—how computed.

84-5408. Transmission of net proceeds to county assessor.

84-5409. Taxation and payment on royalty interests.

84-5401. (2088) Taxation of mines.**Net Proceeds**

In determining the net proceeds under the provisions of sections 84-5402 and 84-5403, the gross product received under section 84-5403 is the amount paid to the producer. Hence, where producer received price of \$63 a ton from general services administration while the New York market price was only \$35 a ton; the total amount received by the producer is to be used. The difference between the market price and the price received is not to be considered a government bonus or subsidy as the producer was not required

to sell to the government. *Minerals Engineering Co. v. Greene*, 131 M 119, 308 P 2d 977, overruling *Klies v. Linnane*, 117 M 59, 156 P 2d 183.

Operation of One or More Mines

The considerations of paramount importance in determining whether an operation constitutes one mine, or more than one, are ownership, location, integration of mining system, and single management. *United States Gypsum Co. v. Schreiner*, 135 M 312, 340 P 2d 548.

84-5402. (2089) Net proceeds tax—statement of yield.

References *Minerals Engineering Co. v. Greene*, 131 M 119, 308 P 2d 977, 978.
Cited or applied in *Minerals Engineer-*

84-5403. (2090) Net proceeds—how computed. The state board of equalization shall calculate and compute from said returns the gross product yielded from such mine, and its gross value in dollars and cents for the year covered by the statement, and also shall calculate and compute the net proceeds in dollars and cents of said mine yielded to such person, corporation or association so engaged in mining which said net proceeds shall be ascertained and determined by subtracting from the value in dollars and cents of the gross product thereof the following, to wit:

1. All royalty paid or apportioned in cash or in kind by the person, corporation or association so engaged in mining.

2. All moneys expended for necessary labor, machinery and supplies needed and used in the mining operations and developments.

3. All moneys expended for improvements, repairs and betterments necessary in and about the working of the mine, except as hereinafter provided.

4. All moneys expended for costs of repairs and replacements of the milling and reduction works used in connection with the mine.

5. Depreciation in the sum of six per cent (6%) of the assessed valuation of such milling and reduction works for the calendar year for which such return is made.

6. All moneys actually expended for transporting the ores, and mineral products or deposits from the mines to the mill or reduction works or to the place of sale, and for extracting the metals and minerals therefrom, and for marketing the product and the conversion of the same into money.

7. All moneys expended for fire insurance and workmen's compensation insurance, and for payments by mine operators to welfare and retirement funds when provided for in wage contracts between mine operators and employees.

In computing the deductions allowable for repairs, improvements and betterments to the mine, the state board of equalization shall compute and allow ten per cent (10%) of such cost each year for a period of ten (10) years.

No moneys invested in mines or improvements shall be allowed as a deduction unless all machinery, equipment and buildings represented by such moneys shall be returned to the county assessor of the county in which such mine is located for assessment purposes, at the level of assessment of all other property in such county.

No moneys invested in the mines and improvements during any year, except the year for which such statement is made, and except as hereinbefore provided in this section, shall be included in such expenditures; and such expenditures shall not include the salaries or any portion thereof, of any person or officer not actually engaged in the working of the mine or superintending the management thereof.

History: En. Sec. 2, Ch. 237, L. 1921; re-en Sec. 2090, R. C. M. 1921; amd. Sec. 2, Ch. 191, L. 1925; amd. Sec. 2, Ch. 139, L. 1927; amd. Sec. 2, Ch. 161, L. 1933; amd. Sec. 2, Ch. 188, L. 1935; amd. Sec. 1, Ch. 57, L. 1951; amd. Sec. 1, Ch. 257, L. 1959.

Amendment

The 1959 amendment, in the first paragraph, substituted the words "covered by the statement" for the words "preceding the first day of January"; added the words "except as hereinafter provided" at the end of subd. 3; inserted the word "actually" in subd. 6; added the two paragraphs next to the last paragraph; and inserted the words "and except as hereinbefore provided in this section" in the last paragraph.

Gross Product—What Included In

Where producer received price of \$63 a ton from general services administration while market price was only \$35 a

ton the difference between the market price and the price received is not to be considered a government bonus or subsidy since the producer was free to sell to anyone and the entire price was to be included in determining the value of the gross product. *Minerals Engineering Co. v. Greene*, 131 M 119, 308 P 2d 977, overruling *Klies v. Linnane*, 117 M 59, 156 P 2d 183.

Operation of One or More Mines

Where the evidence as to ownership, location, integration of mining system, and single management pointed to one mining operation for the purpose of net proceeds taxation, extension of operations to a second ridge of two parallel ridges did not constitute opening of second mine and expenditures for the extension were tax deductible in connection with the first operation. *United States Gypsum Co. v. Schreiner*, 135 M 312, 340 P 2d 548.

84-5407. (2090.4) False or fraudulent reports, procedure in case of.

References

Cited or applied in *Minerals Engineer-*

ing Co. v. Greene, 131 M 119, 308 P 2d 977, 981.

84-5408. (2091) Transmission of net proceeds to county assessor. On or before the first day of July in each year the state board of equalization shall transmit to the county assessor of each county in which such mines and mining claims are situated, the valuation of the net proceeds of such mines and mining claims for the purpose of taxation, as the same have been determined and fixed by such state board of equalization. The said valuation for the purpose of taxation shall be an amount equal to the average net proceeds from such mine for the five calendar years next preceding, or for as many years next preceding as the mine has produced gross yield, or for as many years next preceding as this act has been in effect, whichever is less. The average net proceeds for valuation shall be computed by dividing the total net proceeds for such period by the number of years for which such net proceeds were taken into account. In determining net proceeds of each individual year for averaging to determine valuation for purposes of taxation, the actual annual net proceeds as defined in section

84-5403 of the Revised Codes of Montana, 1947, including losses, if any, from such mines and mining claims shall be taken for each year rather than the average valuation for such year. In no event shall there be valuation for the purpose of taxation for a year when there has been no gross yield from such mines and mining claims for the preceding average years and such years shall not be taken into account in computing the net proceeds for any year. The county assessor shall immediately enter the same upon an assessment roll called "assessment roll of net proceeds of mines," alphabetically arranged, and in which shall be specified in separate columns and under the following heads:

1. The name and address of the owner or lessee of the mine.
2. The description and location of the mine.
3. The number of tons of ore or other mineral products or deposits extracted and treated or sold from the mine during the period covered by the statement.
4. The gross value of the ores, mineral products or deposits, in dollars and cents, extracted and treated, or sold during the year, to be determined as provided in the preceding section.
5. The net proceeds, in dollars and cents, of such mine or mining claims during the years, to be determined as provided in the preceding section.

The form of said assessment roll shall be prescribed by the state board of equalization in conformity with the provisions of this act.

History: En. Sec. 3, Ch. 237, L. 1921; re-en. Sec. 2091, R. C. M. 1921; amd. Sec. 5, Ch. 188, L. 1935; amd. Sec. 1, Ch. 67, L. 1945; amd. Sec. 1, Ch. 181, L. 1959.

vided the act should be in effect from and after its passage and approval. Approved March 7, 1959.

Amendment

The 1959 amendment divided into two sentences what was formerly the first sentence of the section and inserted as new matter between the two the present second, third, fourth, and fifth sentences.

Repealing Clause

Section 2 of Ch. 181, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 181, Laws 1959 pro-

Constitutionality

"Average of annual net proceeds," as provided by this section, as amended in 1959, is not the same as the "annual net proceeds" provided in article XII, section 3, of the Montana constitution and therefore the law is unconstitutional. State ex rel. Roberts v. State Board of Equalization, 138 M 138, 355 P 2d 150, 152.

References

Cited or applied in Minerals Engineering Co. v. Greene, 131 M 119, 308 P 2d 977, 978.

84-5409. (2091.1) Taxation and payment on royalty interests. At the time of transmitting net proceeds assessments the state board of equalization shall also transmit the royalty lists or schedules to the county assessor of each county in which such mines and mining claims are located and thereupon the county assessor shall prepare from such net proceeds and royalty assessments a tax roll which shall be by him furnished to the county treasurer on or before the fifteenth day of September following, upon which date said taxes shall be due and payable. Assessments of royalty on production of metals, and minerals other than petroleum and natural gas, shall be entered by the county assessor in the personal property assessment book in the name of the recipient or owner of such royalty. The county

treasurer shall proceed to give full notice thereof to such recipient or royalty owner, and to collect the taxes thereon in the same manner as taxes on net proceeds of mines.

History: En. Sec. 6, Ch. 188, L. 1935; amd. Sec. 1, Ch. 162, L. 1939; amd. Sec. 2, Ch. 257, L. 1959.

Amendment

The 1959 amendment substituted the word "assessor" for "clerk" each time it appears; substituted "fifteenth day of September" for "twentieth day of August"; deleted the former 2nd, 3rd, and 4th sentences, for text of which see parent volume and changed the form of this section. What are now the last two sentences was formerly the second paragraph.

Repealing Clause

Section 4 of Ch. 257, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 257, Laws 1959 read "The provisions of this act shall apply to the returns required to be filed in 1959 and for each year thereafter."

Section 5 of Ch. 257, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 13, 1959.

CHAPTER 56—CIGARETTE TAX—LICENSES—STAMPS

Section 84-5601. Definitions.

84-5602. Distributors' and dealers' license—application—fees.

84-5606. The tax.

84-5606.1. Legislative intent.

84-5607. Affixing of insignia.

84-5608. Insignia purchased at discount.

84-5609. Use of tax stamping meters.

84-5621. Clerical and field assistants.

84-5601. Definitions. As used in this act, the following definitions shall apply unless the context otherwise requires:

(a) The word "board" shall mean the state board of equalization of the state of Montana.

(b) The word "person" shall mean any individual, firm, fiduciary, partnership, corporation, trust, organization, or association however formed.

(c) The word "insignia" shall mean the impression or mark approved by the state board of equalization, under the provisions of this act.

(d) The words "public warehouses" shall mean agents or representatives of manufacturers who receive cigarettes in carload lots for distribution to distributors and retailers in original cases.

(e) The word "distributor" shall mean any person engaged in the business of producing or manufacturing cigarettes or importing any thereof into this state, for purpose of distribution or sale.

(f) The words "licensed distributor" shall mean distributor duly licensed under the provisions of this act.

(g) The word "dealer" shall mean any person other than a distributor, who is engaged in the business of selling cigarettes at retail, including persons who sell cigarettes at retail through cigarette vending machines.

(h) The words "licensed dealer" shall mean any person other than a distributor, who is duly licensed under the provisions of this act.

(i) The words "sale" and "sell" shall mean and include any transfer of cigarettes by sale, gift, barter or exchange.

History: En. Sec. 1, Ch. 289, L. 1947; amd. Sec. 1, Ch. 18, L. 1957.

Amendment

The 1957 amendment deleted former subd. (c) for text of which see parent volume and relettered subds. (d) to (j) as subds. (c) to (i); in subd. (c) [former

(d)] deleted the words "used in lieu of stamps" which appeared after the word "equalization" and in subd. (g) [former (h)] substituted the words "including persons who sell cigarettes at retail through" for the words "and shall also mean."

84-5602. Distributors' and dealers' license—application—fees. Every such distributor or dealer shall secure a license from the board before engaging in the business of distributor or dealer. A separate application and a separate license shall be required for each place of business owned, controlled or operated by each distributor or dealer within the state of Montana. Cigarette vending machines shall not be considered to be places of business but a separate application and a separate license shall be required for each cigarette vending machine owned, controlled or operated within the state of Montana. Application for such license shall be made on forms prescribed by the board, which shall state the name and address of the applicant, the name, address and place of business to be licensed, the type of business, or such other information as the board may require for the proper administration of this act. Each application for a distributor's license shall be accompanied by a fee of fifteen dollars (\$15.00). Each application for a dealer's license shall be accompanied by a fee of five dollars (\$5.00). No dealer shall be granted a distributor's license except a dealer who also performs, in the usual course of business, a distributor's function. Each license so issued shall be permanently and prominently displayed on the premises or cigarette vending machine covered by the license. Distributors and dealers licensed under this act may buy, sell or have in their possession, only cigarettes which have the insignia provided for in this act on each individual package. The insignia provided for in this act shall be sold to, and affixed by, licensed distributors and licensed dealers only. A distributor's license shall not authorize the holder thereof to make sales of cigarettes at retail in less than carton lots.

History: En. Sec. 2, Ch. 289, L. 1947; amd. Sec. 2, Ch. 18, L. 1957.

Amendment

The 1957 amendment in the first sentence substituted "the business of distributor or dealer" for "such business" and deleted the words "or continuing to engage therein, after July 1, 1947" which appeared at the end of the sentence; in the second sentence substituted "each distributor or dealer" for "such person"; added the third sentence; in the fourth sentence substituted "or" for "and"; in the seventh sentence substituted "dealer" for "retailer" and deleted the words "or wholesaler's" which appeared between the words "distributors" and "function"; in the eighth sentence inserted the words "or cigarette vending machine"; in the ninth

sentence substituted "only cigarettes which have the insignia" for "only such cigarettes upon which has the stamp or insignia" in the tenth sentence deleted the words "stamps or" which appeared before the word "insignia" and substituted "licensed dealers" for "retailers"; from the eleventh sentence deleted a proviso clause which read "provided, however, before said distributor shall make any such sale at retail, the stamp or insignia shall be affixed to each individual package" and also deleted a former twelfth sentence which read "Each cigarette vending machine shall be licensed at a particular place of business, provided that only one machine is to be licensed at a particular place of business where the licensee has more than one machine in operation."

84-5606. The tax. Subdivision—(1) All taxes paid pursuant to the provisions of this section shall be conclusively presumed to be direct taxes on the retail consumer precollected for the purpose of convenience and facility only. When the tax is paid by any other person such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Any person selling cigarettes at retail shall state or separately display in the licensed premises a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this subdivision shall in no way affect the method of collection of such tax as provided by this section.

Subdivision—(2) From and after the effective date of this amendatory law, there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax which shall be paid prior to the time of sale and delivery thereof, to-wit: Five cents (5¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then five cents (5¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package.

Subdivision—(3) From and after the effective date of this amendatory law there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax, in addition to the excise tax on cigarettes, levied, imposed and assessed by subdivision (2) of this section 84-5606, an additional tax which shall be paid prior to the time of sale and delivery of such cigarettes, to-wit:

Two cents (2¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then two cents (2¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package; which additional tax shall continue in force until the payment and retirement of all bonds of the state of Montana, and the payment of interest thereon, issued under the authority of said Initiative No. 54 as amended, for the purpose of paying an honorarium to the residents of Montana who were in military service in the military forces of the United States in World War II, the Korean War, or World War I.

Subdivision—(4) From and after the effective date of this amendatory act of the thirty-eighth legislative assembly of the state of Montana, there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax, in addition to the excise tax on cigarettes, levied, imposed and assessed by subdivisions (2) and (3) of this section 84-5606, an additional tax which shall be paid prior to the time of sale and delivery of such cigarettes, to-wit:

One cent (1¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then one cent (1¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package; which additional tax shall continue

in force until the payment and retirement of the additional bonds of the state of Montana authorized by amendatory acts of the thirty-fifth and thirty-eighth legislative assemblies, and the payment of the interest thereon, and the payment of the expenses of administration of this amendatory act.

Within seventy-two (72) hours after receipt by the distributor or dealer of any such cigarettes, except as hereinafter provided, he shall cause to be securely affixed thereto, the required insignia denoting the tax thereon. Said insignia shall be properly cancelled prior to sale or removal for consumption under such regulations as the board may prescribe. Each package shall have the required insignia to affix thereto in such a manner that the insignia will be destroyed when the package is opened. Every person who shall make, alter, forge or counterfeit any license stamp or insignia provided for in this law, or who shall assist or be concerned therein, or who shall have in his possession any altered, forged, counterfeit or spurious stamp, license or insignia, with intent to defraud the state, is guilty of forgery, and shall be punished by imprisonment in the state prison for not less than one (1) year or more than fourteen (14) years.

History: En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 97, and once by Ch. 270. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments.

Amendments

The amendment by Ch. 18, Laws 1957 in the last paragraph substituted "dealer" for "retailer" in the first sentence; substituted "insignia" for "stamps" in the same sentence; deleted a former second sentence in that paragraph which read "Said stamps shall be properly cancelled prior to sale or removal for consumption under such regulations as the board may prescribe"; substituted "insignia affixed" for "stamp to affix," substituted "insignia" for "stamp" before the words "will be destroyed" in the third sentence and substituted "act" for "law" after the words "provided for in this" in the fourth sentence.

The amendment by Ch. 44, Laws 1957 in the second paragraph of subdivision (2) (now subdivision (3)) inserted "under the authority of said Initiative No. 54 as hereby amended"; substituted "residents of Montana" for "residents of this state"; added "or in said Korean War" and added subdivision (3) (now subdivision (4)).

The amendment by Ch. 222, Laws 1957 in subdivision (1) (now subdivision (2)) increased the tax from 2¢ to 5¢ and in the last paragraph, carried the same change as made by Ch. 18 in the first sentence; reinstated the second sentence, which had been deleted by Ch. 18; substituted "insignia" for "stamps" in that sentence and substituted "insignia" for "stamp" in the third sentence.

Chapter 97, Laws 1963, incorporated all of the 1957 amendments; inserted a new subdivision (1); redesignated former subdivisions (1) to (3) as (2) to (4), respectively; and changed internal references accordingly.

Chapter 270, Laws 1963, added "or World War I" at the end of former Subdivision—(2) (now (3)); substituted "thirty-eighth legislative assembly" for "thirty-fifth legislative assembly" near the beginning of former Subdivision—(3) (now (4)); substituted "amendatory acts of the thirty-fifth and thirty-eighth legislative assemblies" for "this amendatory act of said thirty-fifth legislative assembly" near the end of the second paragraph of former Subdivision—(3) (now (4)); and made minor changes in phraseology.

INITIATIVE MEASURE NO. 54 AMENDMENTS

Initiative Measure No. 54 (Laws 1951, pps. 781 to 790) was amended by chapter 44 and chapter 45 of the 1957 Session, by chapter 13 and chapter 49 of the 1959 Session, and by chapter 192 and chapter 270 of the 1963 Session: These acts read as follows:

Chapter 44, Laws 1957; amd. chapter 13, Laws 1959; amd. chapter 192, Laws 1963

An act to amend Initiative Measure No. 54, adopted by the vote of the legal electors of the state of Montana at the regular general election held in the state of Montana on November 7, 1950, by amending section 1 thereof, defining terms; by amending section 2 thereof so as to provide for the payment of an honorarium to persons serving on active duty during the Korean War; authorizing issuance of six million dollars (\$6,000,000.00) of limited obligation bonds or so much thereof as may be necessary to supplement the moneys now in the "War Veterans' Compensation Fund" sufficiently to make the payments provided for in said Initiative No. 54 as hereby amended; by adding thereto a new section to be numbered 14-A, providing for the deposit of moneys from the sale of such additional bonds in said "War Veterans' Compensation Fund"; amending section 16 of said Initiative No. 54, and amending sections 84-5606 and 84-5621, Revised Codes of Montana, 1947, as amended, by providing an additional excise tax upon the sale of cigarettes in the state of Montana; said moneys to be deposited in the "War Veterans' Compensation Bond Retirement Fund No. 2" for the payment of such additional bonds and interest thereon and creating such fund; making an appropriation of the moneys now remaining in the "War Veterans' Compensation Fund" not needed for the payment of the honorarium to persons who served in World War II and of the funds derived from the sale of said bonds; by adding a section to be numbered 17-A, providing that nothing in this amendatory act shall be construed as impairing the security of the twenty-two million dollars (\$22,000,000.00) of bonds heretofore sold under the authority of said Initiative Measure No. 54; providing that said Initiative No. 54 as by this act amended shall be construed as though it had been originally passed with the amendments made by this amendatory act, if such construction does not conflict with express provisions of this amendatory act; providing limits of time within which claims under subdivisions (b), (c), and (d) of section 2 of said Initiative No. 54, as said section is by this amendatory act amended, under section 3 of said Initiative No. 54 as by this amendatory act amended, or under section 5 of said Initiative No. 54 as by this amendatory act amended,

may be filed; making incidental amendments of the sections of said Initiative No. 54 in this amendatory act specifically referred to, germane to the general purpose of this amendatory act and designed to facilitate the administration thereof; providing that if any part of this amendatory act shall be held invalid, such invalidity shall not affect the other provisions of this act; repealing all acts and parts of acts in conflict herewith; and providing for an effective date.

WHEREAS, the Korean War began before the submission of Initiative No. 54, ADOPTED by the vote of the people of Montana at the regular General Election of November 7, 1950, but too late to permit the inclusion in the provisions of said act of persons in the military service during said Korean War; and

WHEREAS, it was the intent of the people of Montana to recognize by the honorarium provided in said Initiative No. 54 all residents of Montana rendering military service on behalf of said state in the then emergency; and

WHEREAS, said Korean War was a recrudescence of said World War II and properly includable within the provisions of said Initiative No. 54,

Section 1. That section 1 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 1. As used in this law.

(a) The term "World War II" means the period between December 7, 1941, and September 2, 1945, both dates inclusive.

(b) The term "Korean War" means the period between June 25, 1950, and October 16, 1953, both dates inclusive.

(c) The term "Korean Theatre" means the Korean Peninsula and the waters surrounding said Peninsula, the islands of Japan and other territory upon which personnel of the United Nations were based during said Korean War or operating in the presence of the Korean Conflict.

(d) The term "Military Forces" as applied to World War II means the Army, the Navy, the Marine Corps, the Coast Guard, the Construction Battalions, the WAC, the WAVES, the SPARS, the WMR, the Nursing Services, all Air Forces, and all other groups and services in and forming a part of the Armed Services under the control and subject to the discipline of the War Department or the Navy Department of the United States, and engaged in the prosecution of World War II.

(e) The term "Military Forces" as applied to the Korean War means the Army, the Navy, the Marine Corps, the Air Force, the Coast Guard, the Construction Battalions, the WAC, the WAVES, the SPARS, the WMR, the Nursing Services, and all other groups and services forming a part of the Armed Services under the control and subject to the discipline of the Department of Defense of the United States and on active duty during the period of said Korean War. The term "Department of Defense" as herein used means all of the branches of the Armed Services of the United States acting under the unified control of the Department of Defense.

(f) The term "Military Service" means service on active duty by any person in any of the military forces at any time during World War II or during said Korean War.

(g) The term "Person" includes female as well as male.

(h) The term "Serviceman" means a person who is entitled to receive payments under section 2 of this law.

(i) The term "Resident of Montana" means a person who was in military service and who at the time of his or her entry into such military service had his or her home in Montana. A person who, on December 7, 1941, or in the case of the Korean War, on June 25, 1950, was serving on active duty in any of the armed services of the United States and who at the time of his or her then last entry into such service made his or her home in Montana and who was in the military service at some time in World War II, or during the Korean War, shall be deemed a resident of Montana, unless he or she, after such last entry, and before entry into military service in either such war, had established and was then maintaining a home in some other state; and any such serviceman whose parents or surviving parent then resided in Montana, shall be deemed a resident of Montana.

(j) The term "Continental Limits of the United States" means the area of the 48 states and the District of Columbia, to high water mark on its water boundaries.

Section 2. That section 2 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 2. In recognition and appreciation of the valor and devotion of the men and women who, by their military service, carried out and discharged the obligation of the state of Montana to contribute of its man power to the defense of this republic in World War II, and in the prosecution of said Korean War, and in partial adjustment for the economic detriment suffered by them by reason of

their service, the state of Montana hereby grants, and there shall be paid to,

(a) Each resident of Montana who was in military service as a member of any branch of the military forces of the United States at some time during World War II an honorarium, or adjusted compensation, in the sum of ten dollars (\$10.00) for each month and major fraction of a month of such service within the continental limits of the United States, and the sum of fifteen dollars (\$15.00) for each month and major fraction of a month for such service outside the continental limits of the United States:

(b) Each resident of Montana who was in military service at some time during the Korean War, and during part or all of the period of such service was in said Korean Theatre, an honorarium, or adjusted compensation, in the sum of fifteen dollars (\$15.00) for each month and major fraction of a month of such service in said Korean Theatre, and ten dollars (\$10.00) for each month and major fraction of a month of such service outside said Korean Theatre, provided further that any serviceman who, while on active duty in said Korean Theatre during said Korean War, shall have suffered disease or injury from any cause whatsoever, including injury from exposure to weather and/or weather conditions, and in line of duty, and is hospitalized therefor by any of the armed services of the United States he or she shall be deemed, for the purpose of this amendatory act, to have been in military service in said Korean Theatre as long as he or she shall be or have been continuously hospitalized in any hospital or similar institution under the control of or employed by the United States, and wherever situated, subject to the limitation in this subdivision hereinafter specified; provided further that any serviceman who shall have been taken prisoner by the enemy in said Korean Theatre, and who shall have been classified by any of said armed services under the Department of Defense as a prisoner of war, shall receive the sum of fifteen dollars (\$15.00) for each month and major fraction of a month during which he or she was so held by the enemy as such prisoner; but any such prisoner of war shall be paid not less than three hundred dollars (\$300.00); and provided, finally, that no serviceman shall be paid, under any of the provisions of this subdivision, more than six hundred dollars (\$600.00);

(c) Each resident of Montana who was in military service during said Korean War, but whose military service was wholly outside said Korean Theatre, an honorarium, or adjusted compensation of

ten dollars (\$10.00) for each month and major fraction of a month of such service;

(d) The surviving spouse, children, or parents, as the case may be, and as in this amendatory act hereinafter provided, of any Korean serviceman who died in line of duty while in such military service during either World War II or said Korean War, or who shall have died prior to payment under this section from any cause attributable to his military service, in line of duty, as shown by the records of the United States Veterans' Administration, shall be paid the amount to which such deceased serviceman would have been entitled had he received payment of said honorarium, or if such amount is less than five hundred dollars (\$500.00), then such surviving spouse, children or parents, as the case may be, shall be paid the sum of five hundred dollars (\$500.00), and no more;

(e) Provided that there shall be paid to any resident of Montana who has received or is entitled to receive from any other state or territory of the United States a gratuity, bonus, honorarium, adjusted compensation, or similar payment for military service in the military forces in either of said Wars, no more than the excess, if any, of the aggregate amount to which such resident would be entitled hereunder, over and above the amount so received or to which he or she may be entitled from another such state or territory; and provided further that no payment shall be made under this law to any person who was dishonorably discharged from such service and has not been by proper authority restored to an honorable status, nor to any person still in service who is in a dishonorable status.

Section 1. That section 3, chapter 44, Laws of 1957, be, and the same is hereby amended to read as follows:

Section 3. In the case of the death of any such serviceman prior to payment under this law, the amount specified in section 2 of this amendatory act, shall be paid as follows:

(1) To his or her surviving spouse, provided such spouse, if a widow, has not remarried prior to making application for such payment, or

(2) If there is no surviving spouse, or if a widow and she is deceased or has remarried prior to making such application, then to the child or children who shall be living when such payment is made, in equal shares if more than one, and all thereof if only one; or

(3) If there is no surviving spouse, or if there was a widow and she has remarried or is deceased, and if there are no surviving children, then such payment shall be made to the parents of the deceased, or if one of them shall be de-

ceased, then the whole thereof to the parent who survives; or if both parents be deceased, then no payment shall be made.

(4) The payments in this paragraph provided for shall be made only to the persons herein designated who shall be living at the time of payment, and no payment shall be made to the estate of any such person. [As amended by Sec. 1, Ch. 13, Laws 1959.]

[The remainder of Ch. 13, Laws 1959 read as follows:

"Section 2. Nothing in this act shall be deemed to amend or in any way alter the provisions of sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12 or 13 of chapter 44, Laws of 1957.

"Section 3. All acts and parts of acts in conflict herewith are hereby repealed.

"Section 4. This act shall be in full force and effect from and after its passage and approval." Approved February 4, 1959.]

Section 4. That section 5 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 5. In the case of minors or incompetent persons, claims shall be filed by and payments made to his or her guardian, his or her custodian duly appointed by the Veterans' Administration, or his or her legal fiduciary.

Section 5. That section 12 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 12. For the purpose of providing for the payment of the honorarium, or adjusted compensation, herein provided for and for paying the expenses of administration of this law, there shall be issued and sold under the direction and supervision of the board of examiners, limited obligations bonds of the state of Montana in the sum of twenty-two million dollars (\$22,000,000.00) or in such sum within that amount as may be necessary for such purposes. Such bonds shall distinctly state that they are not and shall never be or become a general obligation of the state of Montana, but shall be payable only from the proceeds of a cigarette tax in the manner in this law provided; shall contain the pledge of the state of Montana to continue to levy and collect the cigarette tax in this law provided for and place the proceeds thereof in the War Veterans' Compensation Bond Retirement Fund, until all bonds issued hereunder, and the interest accruing thereon, shall have been paid; shall draw interest at the rate of not more than four and one-half per cent (4½%) per annum, payable semi-annually; but in all other respects the board of examiners is hereby empowered and directed to fix the terms thereof, as to dates of maturity, the time after which and the terms and condi-

tions upon which they may be called for payment prior to maturity; whether payable to bearer or registered, whether serial bonds or otherwise, and to prescribe the general form of such bonds; and said board of examiners is hereby empowered to do whatever is lawful and necessary in the issuance and payment of such bonds and the interest thereon and the administration of this law. The attorney general shall assist the board in the preparation of the form of such bonds. Such bonds shall be signed by the members of the board of examiners and be issued under the great seal of the state of Montana, and a record of all such bonds issued and sold shall be made in the office of the state treasurer. Said bonds shall have interest coupons attached thereto, covering the interest due semi-annually, which coupons shall be executed with facsimile signatures of all the members of said board of examiners, and the signing of such coupons with such facsimile signatures shall be recognized as sufficient execution of such coupons on behalf of the state of Montana. Provided, however, that if the moneys derived from said first issue of twenty-two million dollars (\$22,000,000.00) of bonds as in this section above provided shall be insufficient to pay all claims heretofore filed with and heretofore or hereafter allowed by said board of examiners under the original provisions of said Initiative No. 54 as heretofore amended, and to pay all claims filed and allowed under this amendatory act, together with the expenses of administration of this amendatory act, there shall be issued and sold under the direction and supervision of the board of examiners of the state of Montana limited obligation bonds of the state of Montana in the further sum of six million dollars (\$6,000,000.00) or in such sum within that amount as may be necessary for such purposes. The issuance of such bonds shall be made in the same manner and such bonds shall be subject to the same limitations, restrictions, and provisions as apply to said original issue of twenty-two million dollars (\$22,000,000.00), except that such bonds shall draw not more than four and one-half per cent (4½%) interest and shall be payable only out of a cigarette tax as hereinafter provided in this amendatory act.

Section 6. That there is hereby added to said Initiative No. 54 a new section to be numbered section 14-A, to read as follows:

Section 14-A. The money arising from the sale of such said additional bonds in the amount of six million dollars (\$6,000,000.00) in this amendatory act above-

provided for as may be sold as herein provided shall be deposited in the state treasury to the credit of the special fund created by said Initiative No. 54 and known as the "War Veterans' Compensation Fund," and the moneys now in said fund, after payment of all claims heretofore filed with and heretofore or hereafter allowed by the board of examiners under the original provisions of said Initiative No. 54, shall, together with such additional funds as may be derived from the sale of bonds under the said issue of six million dollars (\$6,000,000.00) authorized by this amendatory act, be used to pay said honorarium granted by subdivisions (b), (c), and (d) of section 2 hereof, and by section 3 of said Initiative No. 54 as hereby amended, and the expense of administration of this amendatory act. For the purpose of carrying out the provisions of this amendatory act there is hereby appropriated from the War Veterans' Compensation Fund, in addition to the appropriation made by section 14 of said Initiative No. 54 as originally enacted, the moneys now remaining in said fund and not needed for the payment of the honorarium to persons who served in World War II, and the sum of six million dollars (\$6,000,000.00), or so much thereof as may be necessary to pay said honorarium to the persons who served in the military forces in said Korean War.

Section 7. That section 16 of said Initiative No. 54 be, and the same is hereby amended to read as follows:

Section 16. That in addition to the aggregate excise tax upon cigarettes now provided for by section 16 of said Initiative Measure No. 54, there is hereby imposed a tax of one cent (1¢) on each package of cigarettes containing not more than twenty (20) cigarettes, and when a package shall contain more than twenty (20) cigarettes, then one cent (1¢) for each twenty (20) or fraction of twenty (20) cigarettes in such package. Such additional tax shall be collected at the same time and in the same manner as the tax levied and imposed by subdivision (2) of said section 16 of said Initiative Measure No. 54. For the purpose of giving full legal effect to said increase of said excise tax, section 84-5606 of said Title 84 and section 84-5621 of said Title 84 are hereby amended so as to read as follows:

Section 84-5606. [See section as set out above.]

Section 84-5621. [See section 84-5621.]

Section 8. There is hereby added to said Initiative No. 54 a new section to be numbered section 17-A to read as follows:

Section 17-A. Nothing in this amendatory act shall be construed as impairing

the security of the twenty-two million dollars (\$22,000,000.00) of bonds heretofore sold under the authority of said Initiative Measure No. 54, or of the interest thereon, but the provision made by said Initiative for the payment of said bonds and the interest thereon shall remain inviolate.

Section 9. Except where such construction would conflict with express provisions of this amendatory act, said Initiative No. 54 shall be construed as though the amendments made hereby had formed a part of said Initiative at the time of its adoption on November 7, 1950. Nothing herein contained is to be construed as extending the time of filing claims under said Initiative No. 54 as originally adopted nor as amended by chapter 123 of the Laws of the Thirty-third Session of the Montana Legislative Assembly, nor as authorizing any payments from said War Veterans' Compensation Fund except expenses of administration of said Initiative as hereby amended, of claims for the honorarium filed on or prior to January 1, 1954, and the expenses of administration in connection therewith, and of the payments provided for in subdivisions (b), (c) and (d), of section 2, and in sections 3 and 5, of said Initiative No. 54 as amended.

Section 10. Claims for benefits under the provisions of subdivisions (b), (c) and (d) of section 2 and/or under sections 3 and 5 of said Initiative No. 54, as by this amendatory act amended, may be filed at any time before the expiration of six (6) years from and after the January first next following the date of the passage and approval of this act, provided, however, that said period of six (6) years shall be extended for a period equal to the period, or the aggregate of the periods, of the time during which the administration of this act shall be suspended, by reason of litigation or from any other cause.

Section 11. If any provision contained in this amendatory act shall for any reason be held invalid, such decision shall not invalidate the remaining provisions of this act.

Section 12. All acts or parts of acts in conflict herewith are hereby repealed.

Section 13. This act will take effect and be in full force and effect from and after its passage and approval. Approved February 26, 1957.

[The remainder of Ch. 192, Laws 1963, read as follows:

"Section 2: All acts and parts of acts in conflict herewith are hereby repealed.

"Section 3. This act shall be in full force and effect upon its passage and approval." Approved March 7, 1963.]

Chapter 45, Laws 1957; amd. chapter 49, Laws 1959

An act to amend Initiative Measure No. 54 adopted by the vote of the legal electors of the state of Montana at the regular general election held in the state of Montana on November 7, 1950, as amended by chapter 123, Session Laws of 1953, relating to section 6 thereof, by providing a new date for applications for payment of the honorarium to be December 31, 1957, repealing all acts and parts of acts in conflict herewith, and containing an effective date.

Section 1. That section 6 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 6. All applications for the payment of the honorarium or adjusted compensation here provided for shall be filed with the board of examiners before the thirty-first day of December, 1959: and the filing of an application with a county clerk and recorder of any county of this state shall be deemed, for the purpose of this section, to have been filed with said board as of the date of filing with such clerk and recorder. Upon receiving any such application such clerk and recorder shall give the applicant a receipt therefor, stating therein the exact time of such filing, and shall immediately endorse the fact and time of filing upon such application, over his signature and seal, and immediately transmit such application to the said board of examiners. Any filing with such board or with any such clerk and recorder within the time limited by this section shall be effective to preserve the rights of the applicant though such application as so filed shall be defective, provided defects therein are later corrected under reasonable rules to be adopted by said board.

[The remainder of Ch. 49, Laws 1959 read as follows:

"Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

"Section 3. This act shall be in full force and effect upon its passage and approval." Approved February 26, 1959.]

Section 3. This act shall be in full force and effect upon its passage and approval. Approved February 26, 1957.

Chapter 270, Laws 1963

An act providing for payment of an honorarium for veterans of World War I from the proceeds of bonds to be retired with income from the cigarette tax; amending sections 3 and 17-A of Initiative No. 54 and sections 84-5606 and 84-5621, R.C.M. 1947; and repealing sections 1, 2 and 12 of Initiative No. 54.

Section 1. There is added a new section 1 to Initiative No. 54 to read as follows:

Section 1. As used in this law.

(a) The term "World War I" means the period between April 6, 1917, and May 11, 1919, both dates inclusive; except that for those persons assigned to duty with the American Expeditionary Forces serving in Siberia, the term World War I includes the period between April 6, 1917, and April 1, 1920, both dates inclusive.

(b) The term "military forces" means the Army, the Navy, the Marine Corps, the Coast Guard, the construction battalions, all women's auxiliary corps, the nursing services, all air forces, and all other groups and services in and forming a part of the armed services under control and subject to the discipline of the war department or the navy department of the United States, and engaged in the prosecution of World War I.

(c) The term "military service" means service on active duty by any person in any of the military forces at any time during World War I.

(d) The term "person" includes female as well as male.

(e) The term "serviceman" means a person who is entitled to receive payments under section 2 of this law.

(f) The term "resident of Montana" means a person, or the parents or surviving parent of a person, who was in military service and who at the time of his entry into such military service had his home in Montana. A person who, on April 6, 1917, was in military service and who at the time of his last entry into such service made his home in Montana shall be deemed a resident of Montana, unless he, after such last entry, and before entry into military service in such war, had established and was then maintaining a home in some other state.

(g) The term "continental limits of the United States" means the area of the fifty (50) states and the District of Columbia, to high water mark on its water boundaries.

Section 2. There is added a new section 2 to Initiative No. 54 to read as follows:

Section 2. (1) In recognition and appreciation of the valor and devotion of the men and women who, by their military service, carried out and discharged the obligation of the state of Montana to contribute of its man power to the defense of this republic in World War I, and in partial adjustment for the economic detriment suffered by them by reason of their service, the state of Montana hereby grants, and there shall be paid to each resident of Montana who was in military service an honorarium, or adjusted compensation, in the sum of ten dollars (\$10) for each month and major fraction of a

month of such service within the continental limits of the United States, and the sum of fifteen dollars (\$15) for each month and major fraction of a month for such service outside the continental limits of the United States.

(2) There shall not be paid to any resident of Montana who has received or is entitled to receive from any other state or territory of the United States a gratuity, bonus, honorarium, adjusted compensation, or similar payment for military service in the military forces in World War I, more than the excess, if any, of the aggregate amount to which such resident would be entitled hereunder, over and above the amount so received or to which he or she may be entitled from another such state or territory.

(3) No payment shall be made under this law to any person who was dishonorably discharged from such service and has not been by proper authority restored to an honorable status, nor to any person still in service who is in a dishonorable status.

Section 3. Section 3 of Initiative Measure No. 54 is amended to read as follows:

Section 3. In the case of the death of any such serviceman prior to payment under this law, the amount to which he was entitled shall be paid as follows:

(1) To his or her surviving spouse, provided such spouse, if a widow, has not remarried prior to making application for such payment, or

(2) If there is no surviving spouse, or if a widow and she is deceased or has remarried prior to making such application, then to any child or children under eighteen (18) years of age who shall be living when such payment is made, in equal shares if more than one, and all thereof if only one; or

(3) If there is no surviving spouse, or if there was a widow and she has remarried or is deceased, and if there are no surviving children under eighteen (18) years of age, then such payment shall be made to the parents of the deceased, or if one of them shall be deceased, then the whole thereof to the parent who survives; or if both parents be deceased, then no payment shall be made.

(4) The payments in this section provided for shall be made only to the persons herein designated who shall be living at the time of payment, and no payment shall be made to the estate of any such person.

Section 4. There is added a new section 12 to Initiative No. 54 to read as follows:

Section 12. If the moneys derived from the issue of bonds authorized by section 12 of Initiative No. 54 as originally enacted and subsequently amended for the purpose of providing for the payment of

the honorarium, or adjusted compensation to veterans of World War II and the Korean War and for paying the expenses of administration of this law shall be insufficient for the payment of the honorarium or adjusted compensation herein provided, there shall be issued and sold under the direction and supervision of the board of examiners, limited obligations bonds of the state of Montana in the sum of two million five hundred thousand dollars (\$2,500,000) or in such sum within that amount as may be necessary for such purposes. Such bonds shall distinctly state that they are not and shall never be or become a general obligation of the state of Montana, but shall be payable only from the proceeds of a cigarette tax in the manner provided for by this law. The bonds shall contain the pledge of the state of Montana to continue to levy and collect the cigarette tax provided for in this law and to apply the proceeds thereof to the retirement of all bonds issued hereunder, and the interest accruing thereon. The bonds shall draw interest at the rate of not more than four and one half per cent (4½%) per annum, payable semiannually; but in all other respects the board of examiners is hereby empowered and directed to fix the terms thereof, as to dates of maturity, the time after which and the terms and conditions upon which they may be called for payment prior to maturity, whether payable to bearer or registered, whether serial bonds or otherwise, and to prescribe the general form of such bonds. The board of examiners is hereby empowered to do whatever is lawful and necessary in the issuance and payment of such bonds and the interest thereon and the administration of this law. The attorney general shall assist the board in the preparation of the form of such bonds. Such bonds shall be signed by the members of the board of examiners and be issued under the great seal of the state of Montana, and a record of all such bonds issued and sold shall be made in the office of the state treasurer. Said bonds shall have interest coupons attached thereto, covering the interest due semiannually, which shall be executed with facsimile signatures of all the members of said board of examiners. The signing of such coupons with facsimile signatures shall be recognized as sufficient execution of the coupons on behalf of the state of Montana.

Section 5. There is added a new section to Initiative No. 54 to be numbered section 14-B, to read as follows:

Section 14-B. The money arising from the sale of such additional bonds in the amount of two million five hundred thousand dollars (\$2,500,000) authorized by this amendatory act shall be deposited in the state treasury to the credit of the

special fund created by Initiative No. 54 and known as the "War Veterans' Compensation Fund," and the moneys now in such fund, after payment of all claims allowed by the board of examiners under the provision of Initiative No. 54 as originally enacted and subsequently amended, shall, together with such additional funds as may be derived from the sale of bonds under the issue authorized by this amendatory act, be used to pay the honoraria granted by sections 2 and 3 of this act, and the expense of administration of this amendatory act. For the purpose of carrying out the provisions of this amendatory act there is appropriated from the War Veterans' Compensation Fund the moneys now remaining in the fund and not needed for the payment of the honoraria to persons who served in World War II or the Korean War, and the sum of two million five hundred thousand dollars (\$2,500,000), or so much thereof as may be necessary to pay honoraria to the persons who served in the military forces in World War I.

Section 6. Section 84-5606, R. C. M. 1947, is amended to read as follows:

Section 84-5606. [See section as set out above.]

Section 7. Section 84-5621, R. C. M. 1947, is amended to read as follows: [See section 84-5621.]

Section 8. Section 17-A of Initiative No. 54 is amended to read as follows:

Section 17-A. Nothing in this amendatory act shall be construed as impairing the security of the twenty-two million dollars (\$22,000,000) of bonds or of the six million dollars (\$6,000,000) of bonds heretofore sold under the authority of said Initiative Measure No. 54, as amended, or of the interest thereon, but the provision made by said Initiative, as amended, for the payment of said bonds and the interest thereon shall remain inviolate.

Section 9. Claims for benefits under the provisions of sections 2 and 3 of Initiative No. 54, as by this amendatory act amended, may be filed at any time before the expiration of three (3) years after the January first next following the date of the passage and approval of this amendatory act, however, such three (3) year period shall be extended for a period equal to the period, or the aggregate of the periods, of the time during which the administration of this act shall be suspended, by reason of litigation or from any other cause.

Section 10. Sections 1, 2 and 12 of Initiative No. 54, as amended, are repealed.

Section 11. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more

of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Submission to Voters

Statute amending initiative act providing for honorarium for World War II

veterans so as to make Korean veterans eligible to receive honorariums was not required to be submitted to the voters under the constitution of Montana. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 915, 916.

84-5606.1. Legislative intent. The Legislative Assembly hereby declares that its intent in enacting Section 1 of this act is to enable those who are subject to the taxes imposed by the federal tax laws to avail themselves of the deductions respecting state and local taxes specified in section 164 of the Federal Internal Revenue Code of 1954 in computing their taxable income.

History: En. Sec. 2, Ch. 97, L. 1963.

84-5607. Affixing of insignia. Insignia shall be affixed to packages of cigarettes only by licensed distributors and dealers. Provided, however, the provisions of this act shall not apply to public warehouses acting as agents of manufacturers.

History: En. Sec. 7, Ch. 289, L. 1947; amd. Sec. 4, Ch. 18, L. 1957.

Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

84-5608. Insignia purchased at discount. Every licensed distributor and dealer will be entitled to purchase said insignia at a discount of eight per cent (8%) of their face value, upon payment therefor. This discount is not applicable to that portion of the tax collected for any veterans' honorarium.

History: En. Sec. 8, Ch. 289, L. 1947; amd. Sec. 5, Ch. 18, L. 1957; amd. Sec. 2, Ch. 222, L. 1957.

Compiler's Note

This section was amended twice in the 1957 Session. Once by chapter 18 and once by chapter 222. Neither law contained a specific effective date. Chapter 18 was signed by the Governor February 18 while chapter 222 was signed March 12. As the acts are not in conflict with each other the Compiler has made a composite section. For specific changes see Amendments below.

Amendments

The 1957 amendment by Ch. 18 substituted "dealer will" for "retailer shall" and "insignia" for "stamps" in the first sentence and added the second sentence.

The 1957 amendment by Ch. 222 made the same changes as the amendment by Ch. 18 and also decreased the discount from 10% to 8%.

Repealing Clause

Section 3 of Ch. 222, Laws 1957 repealed all acts and parts of acts in conflict therewith.

84-5609. Use of tax stamping meters. The board may authorize any manufacturer, distributor or dealer of cigarettes to use a tax stamping meter machine with which to place an insignia upon each package of cigarettes imported, sold or delivered in this state. The insignia shall be one approved by the board. Each individual package of cigarettes imported into this state, delivered or sold therein shall be marked with the proper insignia of such tax stamping meter machine and thereafter any original package of cigarettes so marked may be lawfully possessed and sold within the state by any distributor or dealer licensed under this act. The

board shall supervise and check the operation of such tax stamping meter machines. The operator of such machine, before using the same, shall take the meter thereof to the county treasurer, of the county in which the machine is operated, who is authorized to, and shall set said meter for the number of packages specified and required by the operator. Prior to setting said meter the county treasurer shall collect from said operator the amount of money proper for said setting, less a discount of ten per cent (10%) on that portion of the tax not being collected for any veterans' honorarium. The county treasurer shall immediately report to the board on forms prescribed by it, the name of the operator and the number of packages for which said meter was set and shall immediately forward to the board the amount collected from said operator.

History: En. Sec. 9, Ch. 289, L. 1947; amd. Sec. 6, Ch. 18, L. 1957.

Amendment

The 1957 amendment in the first sentence substituted "dealer" for "retailer" and deleted the words "in lieu of said stamps" which appeared at the end of this sentence; in the fifth sentence inserted the words "before using the same"; added the sixth sentence; in the seventh sentence substituted "shall immediately forward to the board the amount collected from said operator" for "the distributor or retailer, using such tax stamping meter machine, within ten (10) days from the first day of the month of the following month, shall remit to the board the amount of the tax due on the packages of cigarettes for which said tax stamping meter machine was set to stamp for the preceding month" and deleted a former last paragraph which

read "That any distributor or retailer using such tax stamping meter machine shall be required to furnish a surety bond, to be approved by the board, in the sum of five thousand dollars (\$5,000.00) conditioned for the payment of the tax due on packages of cigarettes stamped by said tax stamping meter machines."

Separability Clause

Section 7 of Ch. 18, Laws 1957 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Repealing Clause

Section 8 of Ch. 18, Laws 1957 repealed all acts and parts of acts in conflict therewith.

84-5617. Appeals from decision of the board.

Cross-Reference

Application of Montana Rules of Civil

Procedure to this section, see Table A, M. R. Civ. P. (sec. 93-2711-7).

84-5621. Clerical and field assistants. The board is hereby authorized to employ such clerical and field assistants as may be necessary to properly administer the provisions of this law. All moneys collected under the provisions of subdivision (1) of section 84-5606 of the Montana Revised Codes of 1947, less the expense of collecting all the taxes levied, imposed and assessed by said section 84-5606, shall be paid to the state treasurer and deposited in the general fund of the state. All taxes levied, imposed and assessed under the provisions of subdivision (2) of said section 84-5606 shall, when collected, be paid to the state treasurer and credited to a subfund in the sinking fund and shall, while any of the bonds hereafter issued and sold for the purpose of paying an honorarium, or adjusted compensation, to the residents of Montana who were in military service in the military forces of the United States in World War I or World War II, or any of the interest thereon, remain unpaid, be available for the payment thereof.

All taxes levied, imposed and assessed under the provisions of subdivision (3) of said section 84-5606 shall, when collected, be paid to the state treasurer and credited to a subfund in the sinking fund, which shall, while any of the bonds hereafter issued and sold, in addition to the bonds authorized by said Initiative Measure No. 54, as originally enacted, or any of the interest upon such additional bonds, remain unpaid, be used only for the payment thereof, and of the expenses of administration of this act.

The War Veterans' Compensation Fund established by Initiative No. 54, as amended by Chapter 44, Laws of 1957 is abolished and all moneys in the fund are transferred to a subfund in the bond proceeds and insurance clearance fund. When all veterans' honoraria authorized by law have been paid, such moneys shall be transferred to the two accounts in the sinking fund established by this section.

History: En. Sec. 21, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 209, Ch. 147, L. 1963; amd. Sec. 7, Ch. 270, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 147 and once by Ch. 270. Chapter 270 contained some but not all of the changes made by Ch. 147; other than this, neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section incorporating both amendments.

Amendments

The 1957 amendment added a third paragraph which now appears, as amended in 1963, as the second paragraph.

Chapter 147, Laws 1963, substituted "and credited to a subfund in the sinking fund" after "state treasurer" in the third sentence of the first paragraph for "and credited to a special fund known as the War Veterans' Compensation Bond Retirement Fund, which fund shall be kept segregated from all money in the state treasury"; deleted the former second paragraph, for text of which see parent vol-

ume; substituted "and credited to a subfund in the sinking fund, which" after "state treasurer" in the present second paragraph for "and credited to a special fund to be known as the War Veterans' Compensation Bond Retirement Fund No. 2, which fund shall be kept segregated from all other money in the state treasury and"; and added the third paragraph.

Chapter 270, Laws 1963, deleted the words "credited to a special fund known as the War Veterans' Compensation Bond Retirement Fund, which fund shall be" which appeared after "state treasurer and" in the third sentence of the first paragraph; inserted "World War I or" near the end of the first paragraph; deleted the former second paragraph, for text of which see parent volume; deleted the words "credited to a special fund to be known as the War Veterans' Compensation Bond Retirement Fund No. 2, which fund shall be" which followed "state treasurer and" in the present second paragraph; and substituted "bonds" for "twenty-two million dollars (\$22,000,000.00)" before "authorized by said Initiative Measure No. 54" in the present second paragraph.

References

Cited in *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 909.

CHAPTER 62—MINES OR WELLS PRODUCING NATURAL GAS OR PETROLEUM—NET PROCEEDS TAX

Section 84-6208. County assessors to compute taxes.

84-6208. County assessors to compute taxes. Immediately after the county board of equalization has fixed tax levies on the second Monday in August, the county assessor shall compute the taxes on such net proceeds and royalty assessments, and shall deliver the book to the county treasurer on or before the fifteenth day of September. The county treas-

urer shall proceed to give full notice thereof to such operator and to collect the same in manner provided by law.

The operator or producer shall be liable for the payment of said taxes and same shall be payable by and shall be collected from such operators in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines; provided, however, that the operator may, at his option, withhold from the proceeds of royalty interest, either in kind or in money, an estimated amount of the tax to be paid by him upon such royalty or royalty interest, after such withholding any deviation between the estimated tax and the actual tax may be accounted for by adjusting subsequent withholdings from the proceeds of royalty interests.

History: En. Sec. 8, Ch. 135, L. 1955;
amd. Sec. 1, Ch. 80, L. 1963.

Amendment

The 1963 amendment inserted "or producer" near the beginning of the second paragraph; substituted "same" for "the taxes on royalties" in the first part of the second paragraph; and substituted the proviso to the second paragraph for a proviso reading, "provided, however, that after payment of such tax on royalties such operator may recover or withhold from any proceeds of royalty interest, either in kind or in money, coming into his hands, the amount of any tax paid by him upon such royalty or royalty interest."

Effective Date

Section 2 of Ch. 80, Laws of 1963, provided that the 1963 amendment should apply to returns required to be filed in 1963 and each year thereafter.

Section 4 of Ch. 80, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 26, 1963.

Repealing Clause

Section 3 of Ch. 80, Laws 1963 repealed all acts and parts of acts in conflict therewith.

CHAPTER 65—LICENSE TAXES—RACING ASSOCIATIONS

Section 84-6501. Report to county treasurer after racing event.

84-6502. Rate of tax—payment—disposition.

84-6503. Penalty.

84-6504. Fair boards exempt.

84-6501. Report to county treasurer after racing event. Every club, partnership, individual, corporation or association which may hold or exercise any privileges conferred by section 94-2425, Revised Codes of Montana, 1947, relating to racing associations shall, within twenty (20) days after the determination of any racing event, furnish to the county treasurer in the county wherein said racing takes place, a written report, duly verified by one of its officers, showing the number of bets, wagers or entrance fees sold to or contributed by patrons for such racing event and the amount of gross proceeds thereof.

History: En. Sec. 1, Ch. 57, L. 1961.

Title of Act

An act to provide for the payment of license tax for any racing association taking advantage of the provisions of section 94-2425, Revised Codes of Montana, 1947; providing for collection of said license tax and for the maintaining of records by said racing association; designat-

ing the county treasurer as the officer to be charged with the responsibility of collecting said license tax and supervising said records to be furnished by said racing association; directing that said license tax shall be divided between the county and the general fund of the state of Montana; providing a penalty; excepting from this act, county fair boards; and providing for an effective date of this act.

84-6502. Rate of tax — payment — disposition. Within twenty (20) days of the time of said racing event, said racing association shall pay to the county treasurer of the county where said racing event was held a license tax on the amount of bets, wagers or entrance fees handled daily at the following rates, to-wit:

- (1) Up to ten thousand dollars (\$10,000.00) one-fourth ($\frac{1}{4}$) of one (1) per centum.
- (2) On the next five thousand dollars (\$5,000.00) one-half ($\frac{1}{2}$) of one (1) per centum.
- (3) On the next five thousand dollars (\$5,000.00) three-fourths ($\frac{3}{4}$) of one (1) per centum.
- (4) On the next five thousand dollars (\$5,000.00) one (1) per centum.
- (5) On the next ten thousand dollars (\$10,000.00) two (2) per centum.
- (6) On any excess over thirty-five thousand dollars (\$35,000.00) three (3) per centum.

Subject to a minimum tax of twenty-five dollars (\$25.00) per racing day.

Seventy-five (75) per cent of said tax shall be transmitted to the state treasurer by the county treasurer within a period of ten (10) days after its collection and be placed in the general fund of the state of Montana; the balance of said tax shall be retained by the respective county for its poor fund.

History: En. Sec. 2, Ch. 57, L. 1961.

84-6503. Penalty. Each club, partnership, individual, corporation or association, who fails, neglects or refuses to make and file the report or reports required by this act in the manner or within the time herein provided, or who shall make any false statement with reference to or in connection with such report or reports, shall be deemed guilty of having committed a misdemeanor and upon conviction thereof shall be fined in an amount of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), and each and every day that such violation shall continue shall constitute a separate and distinct offense.

History: En. Sec. 3, Ch. 57, L. 1961.

84-6504. Fair boards exempt. All county fair boards are expressly excepted from the provisions of this act.

History: En. Sec. 4, Ch. 57, L. 1961.

"This act shall be effective from and after the fifteenth (15th) day of April, 1961."

Effective Date

Section 5 of Ch. 57, Laws 1961 read

MISSING

TITLES 85-92

REVISED CODES OF MONTANA

SUPPLEMENTS

1963 SUPPLEMENT TO VOLUME SEVEN

DO NOT THROW AWAY - - -

The 1961 Supplement to Volume Seven.

**THIS supplement is to be used temporarily
with the 1961 Pocket Supplement.**

**BEFORE the end of 1963, you will receive a
replacement for Volume Seven that will in-
corporate all the laws and amendments cov-
ering Title 93 through the 1963 Legislature.**

REVISED CODES OF MONTANA

VOLUME 7 1963 Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
THIRTY-EIGHTH LEGISLATIVE ASSEMBLY

AND

ANNOTATIONS SUPPLEMENTING THE PARENT VOLUME
AND THE 1961 CUMULATIVE POCKET SUPPLEMENT
THROUGH VOLUME 377, PACIFIC
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REVISED CODES OF MONTANA

TITLE 2

AN ACT TO REPEAL AND REENACT THE

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CHAPTER 2—SUPREME COURT

93-216. (8805) Powers and duties of supreme court on appeals.

Equity Cases

In equity cases the supreme court will not disturb the trial court's findings where there is substantial evidence to support them, and will not overturn findings unless there is a decided preponderance of the evidence against them. *Favero v. Wynaecht*, — M —, 371 P 2d 858, 868.

cases will hesitate to overturn findings of the trial court based upon substantial conflicting evidence which would justify an inference in favor of either side of the controversy. *Bouma v. Bynum Irr. Dist.*, 139 M 360, 364 P 2d 47, 49.

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Enott v. Hinkle, — M —, 369 P 2d 413, 414.

Review of Equity Cases

The supreme court in reviewing equity

CHAPTER 3—DISTRICT COURTS

- Section 93-302. Number of judges.
- 93-303. Salaries of district judges.

93-302. (8813) Number of judges. In each judicial district there must be the following number of judges of the district court, who must be elected by the qualified voters of the district, and whose term of office must be four (4) years, to wit: In the first, second, eleventh and sixteenth, two judges each, in the thirteenth, eighth and fourth, three judges, and, in all other districts, one judge each.

On or before April 1, 1963, the governor of this state shall designate and appoint a judge of the fourth judicial district who shall hold office

until the general election to be held during the year 1964, and until his successor is elected and qualified.

History: En. Sec. 1, p. 156, L. 1901; re-en. Sec. 6264, Rev. C. 1907; re-en. Sec. 8813, R. C. M. 1921; amd. Sec. 2, Ch. 91, L. 1929; amd. Sec. 1, Ch. 18, L. 1955; amd. Sec. 1, Ch. 91, L. 1957; amd. Sec. 1, Ch. 161, L. 1959; amd. Sec. 1, Ch. 229, L. 1963.

Amendment

The 1963 amendment increased the number of judges in the fourth district from two to three; deleted temporary provisions for the initial appointment and election of the third judge in the eighth district and the second judge in the eleventh district; added the second paragraph; and made minor changes in phraseology.

93-303. (8814) Salaries of district judges. The annual salary of each district judge shall be fourteen thousand dollars (\$14,000.00).

History: En. Sec. 1, Ch. 176, L. 1919; re-en. Sec. 8814, R. C. M. 1921; amd. Sec. 1, Ch. 114, L. 1947; amd. Sec. 1, Ch. 84, L. 1951; amd. Sec. 1, Ch. 247, L. 1955; amd. Sec. 1, Ch. 198, L. 1959; amd. Sec. 1, Ch. 187, L. 1961; amd. Sec. 2, Ch. 212, L. 1963.

Amendment

The 1963 amendment increased the salary from \$10,700 to \$14,000.

Repealing Clause

Section 3 of Ch. 212, Laws 1963 read "Section 72-106, R. C. M. 1947, and all other acts and parts of acts in conflict herewith are hereby repealed."

Effective Date

Section 4 of Ch. 212, Laws 1963 read "This act shall take effect and be in force on and after July 1, 1964."

CHAPTER 5—GENERAL PROVISIONS RESPECTING THE POWERS, PROCEEDINGS AND HOLDING OF COURTS OF JUSTICE

93-502. (8845) Courts of record may make rules.

Extension of Time to File Bill of Exceptions

A district court may not condition the extension of time authorized by section 93-5505 by requiring an order for a

transcript from the court reporter and a deposit of his estimated cost. State ex rel. Ryan v. District Court, — M —, 368 P 2d 802, 804.

CHAPTER 9—DISQUALIFICATION OF JUDICIAL OFFICERS

Section 93-901. Cases in which judge may be disqualified—calling in another judge.
93-902. Certain officers not to practice law.

93-901. (8868) Cases in which judge may be disqualified—calling in another judge. Any justice, judge, or justice of the peace must not sit or act as such in any action or proceeding:

1. To which he is a party, or in which he is interested;
2. When he is related to either party by consanguinity or affinity within the sixth degree, computed according to the rules of law;
3. When he has been attorney or counsel for either party in the action or proceeding, or when he rendered or made the judgment, order, or decision appealed from;
4. When either party makes and files an affidavit as hereinafter provided, that he has reason to believe, and does believe, he cannot have a fair and impartial hearing or trial before a district judge by reason of the bias or prejudice of such judge. Such affidavit may be made by any party to an action, motion, or proceeding, personally, or by his attorney or agent, and shall be filed with the clerk of the district court in which the same may be

pending. In any judicial district having only one judge the affidavit of disqualification with reference to any action or proceeding to be tried before a jury must be filed at least one day before the day appointed or fixed by the court for setting the trial calendar; provided, however, this limitation shall not apply unless notice of such setting date shall be given to all parties by the clerk of the district court at least fifteen (15) days prior thereto. In all other cases the affidavit must be filed at least fifteen (15) days before the day appointed or fixed for the hearing or trial of any such action, motion, or proceeding (provided such party shall have had notice of the hearing of such action, motion, or proceeding for at least the period of fifteen (15) days and in case he shall not have had notice for such length of time, he shall file such affidavit immediately upon receiving such notice). Upon the filing of the affidavit, the judge as to whom said disqualification is averred shall be without authority to act further in the action, motion, or proceeding, but the provisions of this section do not apply to the arrangement of the calendar, the regulation of the order of business, the power of transferring the action or proceeding to some other court, nor to the power of calling in another district judge to sit and act in such action or proceeding, providing that no judge shall so arrange the calendar as to defeat the purposes of this section. No more than two judges can be disqualified for bias or prejudice, in said action or proceeding, at the instance of the plaintiff, and no more than two at the instance of the defendant, in said action or proceeding, and this limitation shall apply however many parties or persons in interest may be plaintiffs or defendants in such action or proceeding. If there be more than one judge in any judicial district in which said affidavit is made and filed, upon the first disqualification of a judge in the cause, another judge, residing in the judicial district wherein the affidavit is made and filed, must be called in to preside in such action, motion, or proceeding; and upon the second or any subsequent disqualification of a judge in the cause, a district judge of another judicial district of the state must be called in to preside in such action, motion, or proceeding, or the action, motion, or proceeding transferred to a district judge of another judicial district of the state; when another judge has assumed jurisdiction of an action, motion, or proceeding, the clerk of the district court in which the same was pending, shall at once notify the parties or their attorneys of record in the same, either personally or by registered mail, of the name of the judge called in, or to whom such action, motion, or proceeding was transferred. Such second or subsequent affidavit of disqualification shall be filed with the clerk of the district court in which such action, motion or proceeding may be pending within three days after the party or his attorney of record, filing such affidavit, has received notice as to the judge assuming jurisdiction of such action, motion, or proceeding.

History: Ap. p. Sec. 453, p. 134, Bannack Stat.; re-en. Sec. 610, p. 159, Cod. Stat. 1871; re-en. Sec. 530, p. 179, L. 1877; re-en. Sec. 530, 1st Div. Rev. Stat. 1879; re-en. Sec. 547, 1st Div. Comp. Stat. 1887; amd. Sec. 180, C. Civ. Proc. 1895; amd. Ch.

3, 2nd Ex. L. 1903; re-en. Sec. 6315, Rev. C. 1907; amd. Sec. 1, Ch. 114, L. 1909; re-en. Sec. 8868, R. C. M. 1921; amd. Sec. 1, Ch. 93, L. 1927; amd. Sec. 1, Ch. 218, L. 1961; amd. Sec. 1, Ch. 82, L. 1963. Cal. C. Civ. Proc. Sec. 170.

Amendment

The 1963 amendment substituted "fifteen (15) days" for "five days" in two places in the fourth sentence of subd. 4.

Filing of Affidavit—Effect

When an affidavit of disqualification was filed against the presiding judge by the defendant corporation the judge lost all jurisdiction of the cause except as to the arrangement of the calendar and the power of calling in another district judge to sit and act in the proceedings. *Williams v. Widows and Orphans Home, Veterans of Foreign Wars, of Eaton Rapids, Mich.*, — M —, 373 P 2d 948, 949.

Provisions Not Applicable to Criminal Proceeding

This section is applicable only in civil cases. In a criminal proceeding, the proper statute under which a defendant may disqualify a judge is section 94-6913. In *re Larocque's Petition*, 139 M 405, 365 P 2d 950, 951.

93-902. (8869) Certain officers not to practice law. No justice, or judge of a court of record, county clerk, or clerk of any court, or sheriff, shall practice law in any court in this state, nor act as attorney, agent, or solicitor in the prosecution of any claim or application for lands, pensions, patent rights, or other proceedings before any department of the state or general government, or courts of the United States, during his continuance in office, nor shall any justice of the peace practice law before any justice's court in the county in which he resides. Provided, further, that no justice or judge of a court of record, shall act as administrator or executor of any estate for compensation.

History: Ap. p. Secs. 454, 455, p. 134, *Bannack Stat.*; re-en. Secs. 611, 612, p. 159, *Cod. Stat.* 1871; re-en. Secs. 531, 532 p. 179, *L.* 1877; re-en. Secs. 531, 532, 1st Div. Rev. Stat. 1879; re-en. Secs. 548, 549, 1st Div. Comp. Stat. 1887; re-en. Sec. 181, *C. Civ. Proc.* 1895; re-en. Sec. 6316, *Rev. C.* 1907; re-en. Sec. 8869, *E. C. M.* 1921;

Right of Intervener to Disqualify Judge

Where the original defendants who disqualified one judge, and the interveners, who had disqualified another judge, had become parties or persons in interest within the meaning of this section, a third disqualifying affidavit was invalid. *Allman v. Potts*, — M —, 371 P. 2d 11, 13.

An intervener, being a party to the action, is entitled to avail himself of the provisions of this section and in a proper situation may file an affidavit of disqualification. *Allman v. Potts*, — M —, 371 P 2d 11, 13.

Time for Disqualification

A trial judge may be disqualified after the return of a verdict and before the motion for a new trial has been made. *State ex rel. Bellon v. District Court*, — M —, 373 P 2d 314, 316.

amd. Sec. 1, Ch. 23, L. 1963. *Cal. C. Civ. Proc. Sec.* 171.

Amendment

The 1963 amendment substituted "shall" for "must" in two places and added the proviso pertaining to administration of estates.

CHAPTER 14—JURORS—SELECTION AND RETURN

93-1401. (8896) Jury lists, by whom and when to be made.

References

State v. Chapman, 139 M 98, 360 P 2d 703.

93-1402. (8897) Selection of persons qualified to serve as trial jurors.

Duplication of Names

Allegation in challenge to the panel that many names were included more than once on the jury list was sufficient to require the court to hear the facts to

determine whether there had been a material variation from the statutory procedure in making up the jury list. *State v. Chapman*, 139 M 98, 360 P 2d 703.

93-1403. (8898) Lists delivered to clerk.**References**

State v. Chapman, 139 M 98, 360 P 2d 703.

93-1404. (8899) Duty of clerk—jury boxes.**Duplication of Names**

An allegation in a challenge to the panel that many names were included more than once on the jury list was sufficient to require the court to hear the facts to

determine whether there had been a material variation from the statutory procedure in making up the jury list. State v. Chapman, 139 M 98, 360 P 2d 703.

CHAPTER 19—COURT REPORTERS

Section 93-1904. To furnish copies to parties, etc.

93-1904. (8931) To furnish copies to parties, etc. Each reporter specified in this chapter must likewise, upon request, furnish, with all reasonable diligence, to the defendant in a criminal cause, or a party or his attorney in a civil cause, in which he has attended the trial or hearing, a copy, written out at length or in narrative form, from his stenographic notes, of the testimony and proceedings, or a part thereof, upon the trial or hearing, upon payment by the person requiring the same, the sum of seven and one-half cents (\$.075) per folio. If the county attorney or attorney-general or judge requires such copy in a criminal cause, the reporter is entitled to his fees therefor; but he must furnish it, and upon furnishing it, he shall receive a certificate of the sum to which he is so entitled, which is a county charge, and must be paid by the county treasurer upon the certificate like other county charges. If the judge requires such a copy in a civil case to assist him in rendering a decision, the reporter must furnish the same without charge therefor. If it appears to the judge that a defendant in a criminal case is unable to pay for such copy, the same shall be furnished him and paid for by the county.

History: En. Sec. 373, C. Civ. Proc. 1895; re-en. Sec. 6376, Rev. C. 1907; re-en. Sec. 8931, R. C. M. 1921; amd. Sec. 4, Ch. 22, L. 1961; amd. Sec. 1, Ch. 163, L. 1963.

folio for the copy written out in narrative form."

Amendment

The 1963 amendment substituted "seven and one-half cents (\$.075) per folio" at the end of the first sentence for "five cents per folio for the copy written out at length, and seven and one-half cents per

Application for Order

Proper showing must be made to the district court that a defendant in a criminal case is unable to pay for a transcript so as to secure an order that it be furnished him and paid for by the county. State v. Davis, 139 M 616, 362 P 2d 1013, 1014.

CHAPTER 20—ATTORNEYS—QUALIFICATIONS—ADMISSION—LICENSE AND DISBARMENT

Section 93-2011. Disposition of attorneys' license tax.

93-2014. Compensation and expenses of members of board.

93-2015. Fees on application for admission to bar.

93-2020. Witnesses on behalf of complainant, fees and mileage of.

93-2005. (8940) Admission of attorneys from other states.**Objection to Appearance**

Defendants, present in court during

trial, who made no objection to the appearance of nonresident as their attorney,

were not entitled to an order vacating and setting aside judgment on the ground that nonresident attorney was not licensed to practice in Montana. *Shoal v. Bailey*, 139 M 198, 362 P 2d 234, 236.

93-2011. (8946) Disposition of attorneys' license tax. All moneys so collected during any month shall, on or before the first day of the succeeding month, be delivered to and deposited with the state treasurer by the clerk of the supreme court, and the state treasurer shall deposit such moneys in the general fund.

History: En. Sec. 3, Ch. 90, L. 1917; re-en. Sec. 8946, R. C. M. 1921; amd. Sec. 81, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "de-

posit such moneys in the general fund" at the end of the section for "place and hold the same in a special fund to be known as 'attorneys' license tax fund,' and shall be paid out and disbursed as hereinafter provided."

93-2014. (8949) Compensation and expenses of members of board. The members of said board shall be entitled to their necessary traveling expenses in attending meetings of said board and in conducting such examination, and also, when away from their homes or places of residence, their necessary lodging and hotel expenses, and shall be paid such compensation, per diem, for services performed by them as members of said board, as may be fixed and determined by the supreme court.

History: En. Sec. 6, Ch. 90, L. 1917; re-en. Sec. 8949, R. C. M. 1921; amd. Sec. 82, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted a second

sentence reading, "Such expenses and compensation shall be paid out of the attorneys' license tax fund by the state treasurer, upon warrants duly drawn by the state auditor therefor."

93-2015. (8950) Fees on application for admission to bar. Every applicant for admission to the bar, by examination or otherwise, must pay to the clerk of the supreme court, at the time he files his application for examination or his petition for admission, the sum of twenty-five dollars (\$25.00). Should the applicant fail in the examination taken by him, he may take another examination before the said board at any time within one year thereafter without further payment. No other fee shall be exacted for admission of any applicant, if admitted within one year after the payment of the fee of twenty-five dollars (\$25.00) hereinabove designated. All money collected from fees herein provided for shall be deposited with the state treasurer by the clerk of the supreme court, and placed in the general fund.

History: En. Sec. 7, Ch. 90, L. 1917; re-en. Sec. 8950, R. C. M. 1921; amd. Sec. 83, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the

general fund" at the end of the section for "said attorneys' license tax fund, and shall be paid out and disbursed only as herein provided."

93-2020. (8955) Witnesses on behalf of complainant, fees and mileage of. Witnesses on behalf of the complainant in any such action or proceeding shall be entitled to the fees and mileage provided by law for witnesses in civil actions in the district court.

History: En. Sec. 12, Ch. 90, L. 1917; re-en. Sec. 8955, R. C. M. 1921; amd. Sec. 84, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted a final clause reading, "and such fees and mileage

and other costs necessarily incurred in the prosecution of any such action or proceeding shall be paid by the state treasurer out

of the attorneys' license tax fund, upon warrants duly drawn by the state auditor."

93-2021, 93-2022. (8956, 8957) Repealed.

Repeal

These sections (Secs. 13, 14, Ch. 90, L. 1917), relating to payment of expenses

from the attorneys' license tax fund, were repealed by Sec. 242, Ch. 147, Laws 1963.

93-2025. (8960) Repealed.

Repeal

This section (Sec. 17, Ch. 90, L. 1917; Sec. 1, Ch. 9, L. 1931), relating to the

transfer of unexpended license tax funds, was repealed by Sec. 242, Ch. 147, Laws 1963.

93-2038. (8973) Judgment.

Negligence of Attorney

Attorney was deprived of the right to practice in the courts of Montana for 45 days where he was guilty of deliberate falsehood in telling client that case filed in April 1956 was at issue and was await-

ing trial, the debtor in the action having entered no appearance and default judgment such as was entered on April 11, 1961, could have been entered in June of 1956. In re Hirst, — M —, 368 P 2d 157, 158.

CHAPTER 21—ATTORNEYS—POWERS—DUTIES—LIABILITIES AND COMPENSATION

93-2112. (8985) Former public prosecutors not to defend, etc.

Improper Representation

Where prisoner was represented in a second case by court-appointed counsel who had formerly prosecuted him while serving as county attorney in a case resulting in the prior conviction with which

he was charged in the second case, the error, if any, should have been raised in the district court by a writ of error coram nobis and not by habeas corpus proceeding in the supreme court. Butler v. State, 139 M 437, 365 P 2d 822, 823.

CHAPTER 22—JUDICIAL REMEDIES, ACTIONS AND SPECIAL PROCEEDINGS

93-2203. (8997) Action defined.

Cause of Action

A cause of action is ordinarily considered as involving the combination of two elements, first, a right on the part of the plaintiff, and second the violation or infringement of such right by the defendant. Duffy v. Lipsman-Fulkerson & Co., 200 F Supp 71, 72.

The right to maintain an action de-

pends upon the existence of what is termed a cause of action. Duffy v. Lipsman-Fulkerson & Co., 200 F Supp 71, 72.

Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the result of negligent injury to her husband. Duffy v. Lipsman-Fulkerson & Co., 200 F Supp 71, 72.

CHAPTER 25—LIMITATION OF ACTIONS FOR RECOVERY OF REAL PROPERTY

93-2504. (9015) Seizin within five years, when necessary, etc.

Easement by Prescription

Plaintiffs, who acquired prescriptive easement in road across property of defendants by use for thirty-five years before defendants acquired title to the land and attempted to obstruct use, were entitled

to enjoin defendants from interfering with use of right of way over road. Scott v. Weinheimer, — M —, 374 P 2d 91, 96.

To establish the existence of an easement by prescription, the party so claiming must show open, notorious, exclusive,

adverse, continuous and uninterrupted use of the easement claimed for the full statutory period. *Scott v. Weinheimer*, — M —, 374 P 2d 91, 95.

Title to an easement acquired by prescription is as effective as though evidenced by a deed. *Scott v. Weinheimer*, — M —, 374 P 2d 91, 94.

CHAPTER 26—LIMITATION OF OTHER ACTIONS

93-2607. (9033) Two-year limitation.

Subd. 1

Violation of Antitrust Laws

Federal district court properly dismissed counterclaims charging deliberate course of conduct on the part of a utility aimed at destroying business of one of the defendants, failure of utility to operate its pipelines as a common carrier as required by the Federal Leasing Act and the Natural Gas Act, and seeking damages for violations of antitrust laws, which

were barred by this section. *Wight v. Montana-Dakota Utilities Co.*, 299 F 2d 470, 480.

When Action Accrues

An action to reform and enforce contract of sale of corporate assets on the ground of mutual mistake, commenced in April of 1955, was promptly brought where facts constituting the mistake were discovered in December of 1954. *Favero v. Wynaecht*, — M —, 371 P 2d 858, 866.

CHAPTER 27—TIME OF COMMENCEMENT OF ACTIONS—GENERAL PROVISIONS CONCERNING

93-2706. (9052) Actions concerning personal property, etc.

Operation and Effect

Action by an administrator, appointed on May 3, 1960, for estate of decedent who died August 5, 1946, for an accounting to recover estate property, was barred under this section. *Cocanougher v. Cocanougher*, — M —, 375 P 2d 1014, 1016.

The purpose of this section is to fix a definite point of time from which an applicable statute of limitations commences to run rather than have an applicable

statute of limitations start to run when an administrator is appointed no matter how long a period has elapsed after the death of an intestate. *Cocanougher v. Cocanougher*, — M —, 375 P 2d 1014, 1015.

Under this section, where decedent died on August 5, 1946, letters of administration were deemed to have been issued on or before August 5, 1951. *Cocanougher v. Cocanougher*, — M —, 375 P 2d 1014, 1015.

93-2719. (9065) Repealed.

Repeal

This section (Sec. 558, C. Civ. Proc.), relating to objections on the basis that ac-

tion was not commenced in time, was repealed by Sec. 1, Ch. 7, Laws 1963.

CHAPTER 28—PARTIES TO CIVIL ACTIONS

Section 93-2802. Assignment of thing in action not to prejudice defense.

93-2801. (9067) Action to be in name of party in interest.

Assignee under Security Device

The assignee of ranch tenant's net proceeds from the sale of livestock was not a necessary party to an action on the lease by the tenant against the landlord, where the assignment was not absolute and the instrument was clearly a security device on its face. *Green v. Wolff*, — M —, 372 P 2d 427, 432.

Wrongful Death Action

District court was directed to deny peti-

tion of decedent's divorced wife, guardian ad litem of decedent's and her children, to intervene in action for wrongful death under section 93-2810 commenced by the widow as administratrix and trustee for the decedent's minor children, and to strike from the files the complaint in intervention as an attempted substitution of party plaintiffs in a wrongful death action. *State ex rel. Carroll v. District Court*, 139 M 367, 364 P 2d 739, 742.

93-2802. (9068) Assignment of thing in action not to prejudice defense.
 In the case of an assignment of a thing in action, the action by the assignee is without prejudice to any set-off or other defense existing at the time of, or before, notice of the assignment; but this section shall apply only to the extent not otherwise provided for in the Uniform Commercial Code. [Effective January 1, 1965.]

History: En. Sec. 5, p. 44, Bannack Stat.; re-en. Sec. 5, p. 136, L. 1867; re-en. Sec. 5, p. 28, Cod. Stat. 1871; re-en. Sec. 5, p. 40, L. 1877; re-en. Sec. 5, 1st Div. Rev. Stat. 1879; re-en. Sec. 5, 1st Div. Comp. Stat. 1887; re-en. Sec. 571, C. Civ. Proc. 1895; re-en. Sec. 6478, Rev. C. 1907; re-en. Sec. 9068, R. C. M. 1921; amd. Sec. 11-157, Ch. 264, L. 1963. Cal. C. Civ. Proc. Sec. 368.

Amendment

The 1963 amendment substituted "shall apply only to the extent not otherwise provided for in the Uniform Commercial Code" at the end of the section for "does not apply to a negotiable promissory note or bill of exchange, transferred in good faith and upon consideration, before maturity."

93-2805. (9071) Infant, etc., to appear by guardian.

Injury to Minor

Damages awarded for injury to a minor cover both the child's cause of action, pursuant to this section, and the parents' cause of action, pursuant to section 93-2809. *Chavez v. United States*, 192 F Supp 263, 270.

In the case of an injury to a minor, there arises two causes of action, one in favor of the minor under this section and the other in favor of the parents under section 93-2809. *Chavez v. United States*, 192 F Supp 263, 270.

93-2809. (9075) Parent or guardian may sue for injury, etc.

Allowance of Interest

Where the amount due a father for the wrongful death of his minor son was not ascertained (or ascertainable) until after the jury had returned its verdict, interest was allowable only from the date the verdict was rendered. *Wyant v. Dunn*, — M —, 368 P 2d 917, 924. (Dissenting opinion, — M —, 368 P 2d 917, 924.)

ship on a per diem basis, where the trial judge instructed the jury that any remark of counsel not sustained by the evidence should be disregarded. *Wyant v. Dunn*, — M —, 368 P 2d 917, 920. (Dissenting opinion, — M —, 368 P 2d 917, 924.)

Injury to Minor

Damages awarded for injury to a minor cover both the child's cause of action, pursuant to section 93-2805, R. C. M. 1947 (repealed by Laws 1961, ch. 13, sec. 84, effective January 1, 1962), and the parents' cause of action, pursuant to this section. *Chavez v. United States*, 192 F Supp 263, 270.

In the case of an injury to a minor, there arises two causes of action, one in favor of the minor under section 93-2805, R. C. M. 1947 (repealed by Laws 1961, ch. 13, sec. 84, effective January 1, 1962), and the other in favor of the parents under this section. *Chavez v. United States*, 192 F Supp 263, 270.

Amount of Verdict

A verdict of \$15,195 was not excessive in an action by father for wrongful death of his five-year-old son. *Wyant v. Dunn*, — M —, 368 P 2d 917, 921. (Dissenting opinion, — M —, 368 P 2d 917, 924.)

Argument of Counsel

In an action by a father for the wrongful death of his infant son it was not reversible error for the trial court to permit the plaintiff's counsel, over objection, in their argument to the jury, to suggest a mathematical basis for fixing damages for loss of love, affection, and companion-

93-2810. (9076) When representative may sue for death, etc.

Allocation of Amount of Recovery

In the event of a recovery for the wrongful death of the deceased the district court may then take requisite action to allocate the amount of recovery in a proper pro rata share among the surviving

heirs, but it is clearly not for any jury to decide what amount should be awarded to each of the several plaintiffs in such an action. *State ex rel. Carroll v. District Court*, 139 M 367, 364 P 2d 739, 741.

One Action for Wrongful Death

This section specifically provides that there can be but one action for a wrongful death and that such action must be prosecuted and maintained by the personal representative. State ex rel. Carroll v. District Court, 139 M 367, 364 P 2d 739, 741.

Substitution of Parties

District court was directed to deny peti-

tion of decedent's divorced wife, guardian ad litem of decedent's and her children, to intervene in wrongful death action, commenced by the widow as administratrix and trustee for the decedent's minor children, and to strike from the files the complaint in intervention as an attempted substitution of party plaintiffs in a wrongful death action. State ex rel. Carroll v. District Court, 139 M 367, 364 P 2d 739, 742.

93-2824. (9086) Action—when not to abate by death, marriage or other disability—proceedings in such case.

History: Ap. p. Sec. 16, p. 45, Bannack Stat.; re-en. Sec. 16, p. 137, L. 1867; re-en. Sec. 16, p. 29, Cod. Stat. 1871; amd. Sec. 22, p. 43, L. 1877; re-en. Sec. 22, 1st Div. Rev. Stat. 1879; en. Sec. 1, p. 98, L. 1883; re-en. Sec. 22, 1st Div. Comp. Stat. 1887; amd. Sec. 587, C. Civ. Proc. 1895; re-en. Sec. 6494, Rev. C. 1907; re-en. Sec. 9086, R. C. M. 1921; repealed Sec. 84, Ch. 13, L. 1961; re-instated Sec. 2, Ch. 14, L. 1963. Cal. C. Civ. Proc. Sec. 385.

Compiler's Note

This section was originally listed as repealed by section 84 of Chapter 13, Laws 1961. However, Chapter 14, Laws 1963, repealed the repealer and reinstated section 93-2824, retroactive to January 1, 1962. Section 1, Chapter 14, Laws 1963, contained the following recital of purpose: "Under the provisions of Chapter 255, Laws of 1959, the supreme court of the state of Montana was authorized and empowered to have prepared and submit proposed rules of pleading, practice and procedure in civil cases in the courts of this state to the next succeeding legislative session for their consideration; that under the provisions of such chapter, a Civil Rules commission was appointed by the supreme court to make a study and thereafter to submit proposed rules to the court; that thereafter and in accordance with Chapter 255, Laws of 1959, and the order of the supreme court, proposed new rules covering pleading, practice and procedure were submitted to and approved by the supreme court and transmitted to the legislature for its consideration. Such pro-

posed rules were adopted by Chapter 13, Laws of 1961, to be effective January 1, 1962. Inadvertently listed in the tables of statutes superseded by the new rules was section 93-2824, R. C. M. 1947, which was shown as superseded by Rule 25, M. R. Civ. P. Section 93-2824, R. C. M. 1947, dealt with substantive law in that it provided for the survivorship of certain causes of action upon death of the party, whereas Rule 25, M. R. Civ. P. provides for substitution upon the death of a party to an action in which the claim is not thereby extinguished, being purely a procedural rule and in no way carried into the rules the provisions of substantive law set forth in section 93-2824, R. C. M. 1947, and it is necessary that such mistake be corrected retroactive to the date of such inadvertent purported repeal."

Title of Act

An act to correct a mistaken and inadvertent purported repeal of R. C. M. 1947, section 93-2824, known as the "General Survival Statute" which was shown as superseded by Rule 25, M. R. Civ. P., adopted as Chapter 13, Laws of 1961, effective January 1, 1962; re-enacting said section 93-2824, R. C. M. 1947; and making the same retroactive to accomplish the purpose of correcting the mistake contained in Chapter 13, Laws of 1961, Section 79, Rule 86, and Section 82, Table B, Section 83, Table C, and Section 84, and amending Tables B and C of M. R. Civ. P. by deleting therefrom reference to section 93-2824, R. C. M. 1947.

93-2829. (9091) Action by joint-tenant against his cotenant.

Redemption from Tax Sale

Where a mining company neglected to pay its taxes, a cotenant, having a right to operate the mining property and pay all expenses of such operation and account to other cotenants, under section 84-4132,

had sufficient interest in patented mining claims, separately assessed to the mining company, to permit her to redeem the property from a tax sale. Dudley v. Higgins, — M —, 375 P 2d 689, 691.

CHAPTER 29—PLACE OF TRIAL OF CIVIL ACTIONS

93-2902. (9094) Other actions—where the cause, etc.**Prohibition**

Proceeding for writ of prohibition to restrain board of equalization from enforcing amendments to regulations relating to corporation license tax allegedly due on patronage dividends of farm co-opera-

tives should have been brought in the first judicial district under this section and section 84-1508. *State ex rel. Fulton v. District Court*, 139 M 573, 366 P 2d 435, 440.

93-2904. (9096) Other actions, according to the residence of the parties.**Doctrine of Forum Non Conveniens**

In an action commenced under the Federal Employees' Liability Act (U. S. C., tit. 45, sec. 51 et seq.) in the district court of the second judicial district in Silver Bow County, Montana, by plaintiff injured at Spokane, Washington, while working as a switchman, in interstate commerce,

for defendant railroad company incorporated in Minnesota and engaging in business in Washington, defendant was not entitled to dismissal under the doctrine of forum non conveniens because of increased cost of trial in Montana. *State ex rel. Great Northern Ry. Co. v. District Court*, 139 M 453, 365 P 2d 512, 513.

CHAPTER 30—MANNER OF COMMENCING CIVIL ACTIONS—SERVICE OF SUMMONS

93-3001. (9105) Repealed.**Repeal**

This section (Sec. 66, p. 54, L. 1877), relating to the manner of commencement

of civil actions, was repealed by Sec. 1, Ch. 6, Laws 1963.

93-3004. (9108) Repealed.**Repeal**

This section (Sec. 69, p. 55, L. 1877; Sec. 1, p. 143, L. 1899), relating to the manner

and time of issuing an alias summons, was repealed by Sec. 1, Ch. 5, Laws 1963 and by Sec. 2, Ch. 189, Laws 1963.

93-3008. (9112) Service of summons on certain corporations, etc.**References**

Hamilton v. Lion Head Ski Lift, Inc., 139 M 335, 363 P 2d 716, 717.

93-3009, 93-3010. (9113, 9114) Repealed.**Repeal**

These sections (Secs. 2, 3, Ch. 37, L. 1917; Sec. 2, Ch. 122, L. 1951; Sec. 1, Ch. 151, L. 1953; Sec. 17, Ch. 117, L. 1961),

relating to the service of summons on corporations, were repealed by Sec. 2, Ch. 189, Laws 1963.

93-3019. (9123) Repealed.**Repeal**

This section (Sec. 35, p. 141, L. 1867; Sec. 20, p. 55, L. 1874; Sec. 78, p. 58, L.

1877; Sec. 5, p. 9, L. 1881), relating to attachment of jurisdiction of actions, was repealed by Sec. 2, Ch. 189, Laws 1963.

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CHAPTER 34—ANSWER

Section 93-3403. Counterclaim—rules thereof.

✓ **93-3403. (9139) Counterclaim—rules thereof.** A counterclaim on a contract is subject to the following rules:

1. Except as otherwise provided by the Uniform Commercial Code: If the action is founded upon a contract, which has been assigned by the party thereto, a demand existing against the party thereto, or an assignee of the contract, at the time of the assignment thereof, and belonging to the defendant, in good faith, before notice of the assignment, must be allowed as a counterclaim, to the amount of the plaintiff's demand, if it might have been so allowed against the party, or the assignee, while the contract belonged to him.

2. If the plaintiff is a trustee for another, or if the action is in the name of the plaintiff, who has no actual interest in the contract upon which it is founded, a demand against the plaintiff shall not be allowed as a counterclaim; but so much of a demand existing against the person whom he represents, or for whose benefit the action is brought, as will satisfy the plaintiff's demand, must be allowed as a counterclaim, if it might have been so allowed in an action brought by the person beneficially interested. [Effective January 1, 1965.]

History: En. Sec. 692, C. Civ. Proc. 1895; re-en. Sec. 6542, Rev. C. 1907; re-en. Sec. 9139, R. C. M. 1921; amd. Sec. 11-153, Ch. 264, L. 1963. Cal. C. Civ. Proc. Sec. 438.

Amendment

The 1963 amendment substituted "A counterclaim on a contract" at the beginning of the section for "But the counterclaim, specified in subdivision 2 of

the last section"; inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of paragraph 1; deleted the words "other than a negotiable promissory note or bill of exchange" which followed "assigned by the party thereto" in paragraph 1; deleted former paragraph 2, for text of which see parent volume; and redesignated former paragraph 3 as 2.

CHAPTER 37—VERIFICATION OF PLEADINGS

Section 93-3702. Verification of pleadings.

✓ **93-3702. (9163) Verification of pleadings.** In any case in which an affidavit of verification is required, except as otherwise specifically provided, such affidavit of verification must be to the effect that the pleading is true to the knowledge of the deponent, except as to the matters therein stated on information and belief, and that as to those he believes it to be true. Such verification must be made by the party, or, if there are several parties united in interest or pleading, by one at least of such parties acquainted with the facts, if such party is in the county and capable of making the affidavit. The verification may also be made by the agent or attorney of the party, if the party is absent from the county where the attorney resides, or is from any other cause unable to verify the pleading, and in such case the verification must state that the deponent is the agent or attorney of the party, and the reason why such verification is made by such agent or attorney, and that the matters stated in the pleading are true to the best knowledge, information and belief of such agent or attorney. When a corporation is a party, the verification may be made by any officer thereof, and must state what officer he is, and that the matters stated therein are true to the best knowledge, information, and belief of such officer. If there

is no officer of the corporation within the county, the verification may be made by its attorney.

History: Ap. p. Sec. 55, p. 144, L. 1867; amd. Sec. 9, p. 64, L. 1869; amd. Sec. 63, p. 39, Cod. Stat. 1871; re-en. Sec. 94, p. 62, L. 1877; re-en. Sec. 94, 1st Div. Rev. Stat. 1879; re-en. Sec. 96, 1st Div. Comp. Stat. 1887; en. Sec. 731, C. Civ. Proc. 1895; re-en. Sec. 6565, Rev. C. 1907; re-en. Sec. 9163, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1963. Cal. C. Civ. Proc. Sec. 446.

answers, and replies must be verified as provided in this section, except that when an admission of the truth of the allegation might subject the party to a prosecution for felony or misdemeanor, or when the action or defense is in behalf of the state, county, or a subdivision thereof, or a municipal corporation, the verification may be omitted. The."

Amendment

The 1963 amendment substituted the words "In any case in which an affidavit of verification is required, except as otherwise specifically provided, such" at the beginning of the section for "All complaints,

Effect of Failure to Verify

It is negligence for an attorney to file a complaint in a district court which is not verified as required by this section. In re Hirst, — M —, 368 P 2d 157, 158.

CHAPTER 43—ATTACHMENT

- Section 93-4301. When attachment may issue.
 93-4302. Affidavit—what to contain.
 93-4307. Levy of attachment.
 93-4338. Attachment of personal property subject to a security interest.
 93-4344. Possession under a mortgage—how acquired.
 93-4346. Duty of county clerk and recorder of marks and brands to record papers.

93-4301. (9256) When attachment may issue. The plaintiff, at the time of issuing the summons, or at any time afterward, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless the defendant gives security to pay such judgment, as in this chapter provided, as follows:

In an action upon a contract, express or implied, for the direct payment of money, where the contract is not secured by any mortgage or lien upon real property, or, if originally secured, such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless, and in an action based upon a statutory stockholders' liability. [Effective January 1, 1965.]

History: Earlier acts were Sec. 91, p. 60, Bannack Stat.; amd. Sec. 120, p. 156, L. 1867; amd. Sec. 11, p. 64, L. 1869; amd. Sec. 137, p. 54, Cod. Stat. 1871; amd. Sec. 2, p. 40, Ex. L. 1873; re-en. Sec. 179, p. 82, L. 1877; re-en. Sec. 179, 1st Div. Rev. Stat. 1879; re-en. Sec. 181, 1st Div. Comp. Stat. 1887.

En. Sec. 890, C. Civ. Proc. 1895; re-en. Sec. 6656, Rev. C. 1907; re-en. Sec. 9256,

R. C. M. 1921; amd. Sec. 1, Ch. 82, L. 1931; amd. Sec. 11-159, Ch. 264, L. 1963. Cal. C. Civ. Proc. Sec. 537.

Amendment

The 1963 amendment substituted "mortgage or lien upon real property" in the second paragraph for "mortgage or lien upon real or personal property, or any pledge of personal property."

93-4302. (9257) Affidavit—what to contain. The clerk of the court must issue the writ of attachment, upon receiving an affidavit by or on behalf of the plaintiff, showing:

1. That such defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal counterclaims) upon a contract, express or implied, for the direct payment of money, and that

the payment of the same has not been secured by any mortgage or lien upon real property, or, if originally so secured, that such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless; and

2. That the attachment is not sought, and the action is not prosecuted, to hinder, delay, or defraud any creditor of the defendant. [Effective January 1, 1965.]

History: Earlier acts were Sec. 91, p. 60, Bannack Stat.; amd. Sec. 120, p. 156, L. 1867; amd. Sec. 11, p. 64, L. 1869; amd. Sec. 137, p. 54, Cod. Stat. 1871; amd. Sec. 2, p. 40, Ex. L. 1873; re-en. Sec. 179, p. 82, L. 1877; re-en. Sec. 179, 1st Div. Rev. Stat. 1879; re-en. Sec. 181, 1st Div. Comp. Stat. 1887.

This section en. Sec. 891, C. Civ. Proc. 1895; re-en. Sec. 6657, Rev. C. 1907; re-en.

Sec. 9257, R. C. M. 1921; amd. Sec. 11-160, Ch. 264, L. 1963. Cal. C. Civ. Proc. Sec. 538.

Amendment

The 1963 amendment substituted "mortgage or lien upon real property" in paragraph 1 for "mortgage or lien upon real or personal property, or any pledge of personal property."

93-4307. (9262) Levy of attachment. The sheriff to whom the writ is directed and delivered must execute the same without delay, and if the undertaking mentioned in section 93-4305 be not given, as follows:

1 to 3. * * * [Same as parent volume.]

4. Investment securities as defined in the Uniform Commercial Code may be attached or levied upon only by seizure by the officer making the attachment or levy; provided, that such a security which has been surrendered to the issuer may be attached or levied upon by leaving with the president, or other head of the same, or the secretary, cashier, or other managing agent thereof, a copy of the writ, and a notice stating that the security of the defendant is attached in pursuance of such writ. Stocks or shares, or interest in stocks or shares, of any corporation or company, other than such investment securities, may be attached either by seizure or by leaving with the president, or other head of the same, or the secretary, cashier, or other managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached in pursuance of such writ. [Effective January 1, 1965.]

5 to 7. * * * [Same as parent volume.]

History: En. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R. C. M. 1921; amd. Sec. 1, Ch. 71, L. 1931; amd. Sec.

11-161, Ch. 264, L. 1963. Cal. C. Civ. Proc. Sec. 542.

Amendment

The 1963 amendment inserted a new first sentence in paragraph 4; and substituted "other than such investment securities, may be attached either by seizure or" in the second sentence of paragraph 4 for "must be attached."

93-4338. (9291) Attachment of personal property subject to a security interest. Personal property subject to a security interest may be taken on attachment or execution issued at the suit of a creditor of the debtor under the security agreement; but before the property is so taken, the officer levying the writ must pay or tender to the secured party the amount of the

security agreement debt and interest, or must deposit the same with the county treasurer of the county in which the financing statement covering the security agreement is filed, if such statement is filed with a county clerk and recorder, or if such statement is filed with another filing officer pursuant to law, then with such other filing officer, payable to the order of the secured party; and when the property then taken is sold under process, the officer levying the writ must apply the proceeds of the sale as follows:

1. To the repayment of the sum paid to the secured party, with interest from the date of such payment; and,
2. The balance, if any, in like manner as the proceeds of sales under execution are applied in other cases.

The secured party under any security agreement of record shall, upon fifteen days' notice in writing served upon him in person by any creditor of the debtor seeking to satisfy a judgment or demand of such creditor against the debtor, be required to make and file in the office of the county clerk and recorder or other filing officer with whom the financing statement covering the security agreement is filed, an affidavit showing the amount of the indebtedness then actually due and owing to the secured party, and such affidavit shall state the amount of the original obligation for which the security agreement was given as security, and all additional advancements of money or property on the principal obligation since the date of the execution of the security agreement, and all payments of whatsoever kind, whether on principal or interest, made by the debtor to the date of the execution of such affidavit by the secured party, and showing the balance then remaining due and unpaid to the secured party. If within fifteen days from the service of any such demand in writing on the secured party by any creditor of the debtor the secured party shall fail, refuse, or neglect to file the affidavit herein required, the security agreement shall be of no force or effect as against such creditor upon the seizure of any such personal property on attachment or execution. In the event the amount shown to be due is paid to the county treasurer, or to a filing officer as aforesaid, or to the secured party, in satisfaction of the security agreement by any attaching or execution creditor against the debtor, the secured party shall be required to surrender to the county treasurer or such filing officer the security agreement and any note or other evidence of indebtedness secured thereby, which said security agreement or other evidence of indebtedness shall be delivered by the secured party, county treasurer, or filing officer to the attaching or execution creditor. In the event the property is sold under attachment or execution, such attaching creditor shall be required to deliver to the debtor the security agreement and any note or other evidence of indebtedness secured thereby obtained from the secured party when the property is sold for the amount of the indebtedness under the security agreement, or an amount in excess thereof. [Effective January 1, 1965.]

History: En. Sec. 1, Ch. 111, L. 1921; re-en. Sec. 9291, R. C. M. 1921; amd. Sec. 11-162, Ch. 264, L. 1963.

Amendment

The 1963 amendment substantially re-wrote this section. For previous text, see parent volume.

93-4339. (9292) Repealed.**Repeal**

This section (Sec. 923, C. Civ. Proc. 1895), relating to attachment of mort-

gaged and pledged personal property, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

93-4344. (9297) Possession under a mortgage—how acquired. In all cases where it is necessary, under the laws of this state, for a party to any mortgage, assignment, bill of sale, or other contract, between the first day of November and the next succeeding fifteenth day of May, to take possession of any such cattle or horses in order to preserve his rights under any such mortgage, assignment, bill of sale, or other contract, it is sufficient for such party to file a copy of the instrument under which he claims, with a notice of such claim appended thereto, with the general recorder of marks and brands within five days after it becomes necessary for him to so take custody and possession of the same. [Effective January 1, 1965.]

History: En. Sec. 2, p. 111, L. 1885; re-en. Sec. 224, 1st Div. Comp. Stat. 1887; re-en. Sec. 941, C. Civ. Proc. 1895; re-en. Sec. 6694, Rev. C. 1907; re-en. Sec. 9297, R. C. M. 1921; amd. Sec. 11-163, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "general recorder of marks and brands" near the end of the section for "county clerk of the county wherein such property is running at large."

93-4346. (9299) Duty of county clerk and recorder of marks and brands to record papers. It is the duty of the county clerk and of the general recorder of marks and brands to file all papers deposited with them for that purpose, and required to be filed under the provisions of the three preceding sections, and preserve the same as other records of their offices are preserved, and furnish to persons making inquiry about such files all necessary information concerning the same. [Effective January 1, 1965.]

History: En. Sec. 4, p. 112, L. 1885; re-en. Sec. 226, 1st Div. Comp. Stat. 1887; re-en. Sec. 943, C. Civ. Proc. 1895; re-en. Sec. 6696, Rev. C. 1907; re-en. Sec. 9299, R. C. M. 1921; amd. Sec. 11-164, Ch. 264, L. 1963.

Amendment

The 1963 amendment inserted "and of the general recorder of marks and brands" near the beginning of the section; and made minor changes in phraseology.

CHAPTER 51—TRIAL—CONDUCT OF THE TRIAL

93-5101. (9349) Order of trial.**Argument of Counsel**

In an action by a father for the wrongful death of his infant son it was not reversible error for the trial court to permit the plaintiff's counsel, over objection, in their argument to the jury, to suggest a mathematical basis for fixing damages for loss of love, affection, and

companionship on a per diem basis, where the trial judge instructed the jury that any remark of counsel not sustained by the evidence should be disregarded. *Wyant v. Dunn*, — M —, 368 P 2d 917, 920. (Dissenting opinion, — M —, 368 P 2d 917, 924.)

93-5102. (9350) View by jury of the premises.**Discretion of Trial Court**

Refusal of trial court to permit jury to view premises will not be reviewed by

the supreme court in the absence of a showing of an abuse of discretion. *Puetz v. Carlson*, 139 M 373, 364 P 2d 742, 747.

CHAPTER 52—THE VERDICT—GENERAL AND SPECIAL—DIRECTED WHEN

93-5205. (9364) Directed verdict—when.**Motion for Directed Verdict**

Star Transfer Co., — M —, 376 P 2d 504, 507.

When a case presents only a question of law a directed verdict is proper. *Hurly v.*

CHAPTER 53—TRIAL BY THE COURT

93-5306. (9370) Exception for defective findings, etc.**When Not Applicable**

This rule does not apply where defendants attack the findings for what they

declare, not for the absence of findings or because of omission in the findings. *Enott v. Hinkle*, — M —, 369 P 2d 413, 414.

CHAPTER 55—EXCEPTIONS—SETTLEMENT AND ALLOWANCE OF BILL

93-5505. (9390) Exceptions not presented at time of ruling, etc.**Extending Time for Preparation of Bill—Rule of District Court**

A district court may not condition the extension of time authorized by this section by requiring an order for a transcript from the court reporter and a deposit of his estimated cost. *State ex rel. Ryan v. District Court*, — M —, 368 P 2d 802, 804.

Juvenile Appeal

A juvenile who appeals from a com-

mitment by virtue of the provisions of section 10-630 has the right to have the evidence presented in the district court settled in a bill of exceptions and brought before the supreme court for a review. *In re Gonzalez*, 139 M 592, 366 P 2d 718, 720.

References

State ex rel. White v. District Court, 139 M 613, 359 P 2d 133.

CHAPTER 56—NEW TRIALS—GROUNDS AND MOTIONS FOR—RECORD ON APPEAL FROM FINAL JUDGMENT

93-5603. (9397) When a new trial may be granted.**Subd. 1****Irregularity in the Proceedings**

When a party to a lawsuit threatens a witness, there has been an irregularity in the proceedings of the court which prevents a fair trial. *Herren v. Hawks*, 139 M 440, 365 P 2d 641, 644.

Waiver of Irregularity in the Proceedings

If plaintiff is unable to expose the misconduct of the defendant because of a reasonably based fear for the safety of a witness, then failure to do so is not a waiver of the irregularity in the proceed-

ings of the court. *Herren v. Hawks*, 139 M 440, 365 P 2d 641, 645.

Subd. 4**Misconduct of Defendant**

In an action for injuries from a dog bite the district court did not abuse its discretion in granting a new trial because of threats of defendant to plaintiff's witness just prior to trial where the affidavit of the plaintiff alleged that misconduct of defendant could not be exposed at the trial because of a reasonably based fear for the safety of the witness. *Herren v. Hawks*, 139 M 440, 365 P 2d 641, 645.

CHAPTER 58—THE EXECUTION

Section 93-5811. Execution against one of a partnership.

93-5811. (9425) Execution against one of a partnership. If execution is levied upon the interest of one or more parties in the goods and property of a partnership, the same proceedings shall be had as in attachments, provided in sections 93-4336 and 93-4337. [Effective January 1, 1965.]

History: En. Sec. 1219, C. Civ. Proc. 1895; re-en. Sec. 6822, Rev. C. 1907; re-en. Sec. 9425, R. C. M. 1921; amd. Sec. 11-165, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted a second sentence reading, "Personal property mortgaged or pledged may be taken on execution as provided in section 52-309."

93-5825. (9433) Selling without notice—penalty.

References

Husky Hi Power, Inc. v. Schmidt, — M —, 372 P 2d 142, 144.

93-5826. (9434) Sales—how conducted.

Sheriff's Return

A statement in the sheriff's return that he sold the land in separate parcels, as required by this section, may be overcome

only by clear, unequivocal, and convincing evidence. Husky Hi Power, Inc. v. Schmidt, — M —, 372 P 2d 142, 144.

CHAPTER 59—PROCEEDINGS SUPPLEMENTARY TO EXECUTION

93-5901. (9454) Debtor required to answer concerning his property.

Attendance Outside County

A debtor may not be required to attend court outside the county of his residence

in a proceeding initiated under this section. Belote v. Bakken, 139 M 43, 359 P 2d 372.

93-5902. (9455) Proceedings to compel debtor to appear, etc.

Property To Be Specified

A creditor's affidavit on information and belief that the debtor had property that could be applied to the judgment, but not specifying any such property, was

insufficient to initiate a proceeding under this section; such affidavit, if sufficient at all, initiates a proceeding under section 93-5901. Belote v. Bakken, 139 M 43, 359 P 2d 372.

93-5906. (9459) Judge may order property to be applied on execution.

Judgment against Associates

In supplemental proceedings in aid of execution, district court had no authority to render judgment ordering plaintiff to recover against all doctors, copartners, doing business as a medical clinic, a co-partnership, so that judgment against one

doctor became a judgment against his three associates, where his associates were not served with process, were not present, were not parties to the proceedings, and were not represented. Hoopes v. District Court, — M —, 375 P 2d 691, 695.

93-5907. (9460) Proceedings upon claim of another party to property, etc.

References

Cited in Hoopes v. District Court, — M —, 375 P 2d 691, 694.

CHAPTER 60—FORECLOSURE OF MORTGAGES—ACTIONS FOR—SALES UNDER POWERS

Section 93-6001. Proceedings in foreclosure suits.

93-6004. Power of sale.

93-6005. Sale of real estate under power in mortgage—posting notices.

93-6006. Rights of redemption applicable.

93-6007. Allowance of attorneys' fees—petition and notice.

93-6010. Instruments—negotiability and remedies.

93-6001. (9467) Proceedings in foreclosure suits. There is but one action for the recovery of debt, or the enforcement of any right secured by

mortgage upon real estate, which action must be in accordance with the provisions of this chapter. In such action the court may, by its judgment, direct a sale of the encumbered property (or so much thereof as may be necessary), and the application of the proceeds of the sale, and the payment of the costs of the court and the expenses of the sale, and the amount due the plaintiff; and if it appear from the sheriff's return that the proceeds are insufficient, and a balance still remains due, judgment can then be docketed for such balance against the defendant or defendants personally liable for the debt, and it becomes a lien upon the real estate of such judgment debtor, as in other cases on which execution may be issued. No person holding a conveyance from or under the mortgagor of the property mortgaged, or having a lien thereon, which conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, need be made a party to such action; and the judgment therein rendered, and the proceedings therein had, are as conclusive against the party holding such unrecorded conveyance or lien as if he had been made a party to the action. [Effective January 1, 1965.]

History: Ap. p. Sec. 223, p. 90, Bannack Stat.; en. Sec. 246, p. 185, L. 1867; re-en. Sec. 295, p. 92, Cod. Stat. 1871; re-en. Sec. 346, p. 135, L. 1877; re-en. Sec. 346, 1st Div. Rev. Stat. 1879; re-en. Sec. 358, 1st Div. Comp. Stat. 1887; amd. Sec. 1290, C. Civ. Proc. 1895; re-en. Sec. 6861, Rev. C. 1907; re-en. Sec. 9467, R. C. M. 1921; amd.

Sec. 11-166, Ch. 264, L. 1963. Cal. C. Civ. Proc. Sec. 726.

Amendment

The 1963 amendment deleted "or personal property" following "real estate" in the first sentence.

93-6004. (9470) Power of sale. When a real estate mortgage confers a power of sale, either upon the mortgagee or any other person, to be executed after a breach of the obligation for which the mortgage is a security, either an action may be maintained under this chapter to foreclose, or proceedings may be had under the provisions of the mortgage. [Effective January 1, 1965.]

History: En. Sec. 1293, C. Civ. Proc. 1895; re-en. Sec. 6864, Rev. C. 1907; re-en. Sec. 9470, R. C. M. 1921; amd. Sec. 11-167, C. 1964, L. 1963.

Amendment

The 1963 amendment inserted "real estate" before "mortgage" near the beginning of the section.

93-6005. (9471) Sale of real estate under power in mortgage—posting notices. Hereafter real estate sold under a power of sale given and contained in a mortgage of real estate, except in a trust indenture as defined in the "Small Tract Financing Act of Montana," shall be advertised for sale at least thirty days before the date fixed for such sale, in a newspaper in the county in which such real estate is situated, and in case there is no newspaper printed and published in said county, then by posting notices in at least five conspicuous places in said county, one of which notices must be posted on the land so advertised for sale. Two other of said notices must be posted in conspicuous places in the township in which said land is situated, one in such conspicuous place in said county as will be most likely to give notice to all persons interested in said sale, and one of said notices must be posted in a conspicuous place at the front door of the county courthouse of the county in which said land is located, and in addition to the said publication or posting, as hereinbefore provided, notices of such

sale must be served personally at least thirty days before the date fixed for such sale upon the occupant of the property so advertised for sale, and upon the mortgagor if within the state of Montana, and upon every person or persons having or claiming an interest of record in the said real estate so advertised for sale who may be found within the said state of Montana.

History: En. Sec. 1, Ch. 165, L. 1917;
re-en. Sec. 9471, R. C. M. 1921; amd. Sec.
18, Ch. 177, L. 1963.

Amendment

The 1963 amendment inserted "except in a trust indenture as defined in the 'Small Tract Financing Act of Montana'" after "mortgage of real estate" in the first sentence.

93-6006. (9472) Rights of redemption applicable. All of the rights, powers, and privileges, concerning the redemption from sales of real estate applicable to the sales of real estate under foreclosure proceedings or sales under execution, shall be granted and allowed to sales of real estate under and by virtue of the power of sale contained in any mortgage or deed of trust in this state except to sales of real estate under and by virtue of the power of sale conferred upon a trustee under a trust indenture as defined in the "Small Tract Financing Act of Montana."

History: En. Sec. 2, Ch. 165, L. 1917;
re-en. Sec. 9472, R. C. M. 1921; amd. Sec.
19, Ch. 177, L. 1963.

Amendment

The 1963 amendment added the final clause of the section, beginning with "except to sales of real estate."

93-6007. (9473) Allowance of attorneys' fees—petition and notice. If the mortgagee shall demand attorneys' fees in case of the sale of real estate under and by virtue of the power of sale contained in any mortgage or deed of trust in this state, except in case of the sale of real estate by virtue of a power of sale conferred upon a trustee under a trust indenture as defined in the "Small Tract Financing Act of Montana," he shall petition the district court of the county in which said real estate, or any part thereof, may be situated to fix the amount of such attorneys' fee, and a copy of such petition shall be served upon all parties having or claiming an interest of record in the property to be sold, or such of them as may be found within the state, which said copy of said petition must be served at least ten days before the day fixed for hearing, and notice of the time and place of such hearing shall be served at the same time as the copy of said petition is served; such petition shall be acted upon by the said district court before the notice of sale by publication or posting, as hereinbefore provided for, shall be given.

History: En. Sec. 3, Ch. 165, L. 1917;
re-en. Sec. 9473, R. C. M. 1921; amd. Sec.
20, Ch. 177, L. 1963.

Amendment

The 1963 amendment inserted the words

"except in case of the sale of real estate by virtue of a power of sale conferred upon a trustee under a trust indenture as defined in the 'Small Tract Financing Act of Montana'" in the first part of the section.

93-6010. Instruments—negotiability and remedies. Nothing in this chapter shall be deemed to affect the negotiability of an instrument, and nothing in this chapter shall be deemed to limit remedies otherwise avail-

able to the purchaser of a promissory note secured by a mortgage unless such purchaser at the time of purchase had notice that the note was so secured. [Effective January 1, 1965.]

History: En. 1963-6010 by Sec. 11-168, Ch. 264, L. 1963.

CHAPTER 62—QUIETING TITLE TO PROPERTY, REAL AND PERSONAL AND OTHER ACTIONS CONCERNING REAL ESTATE

93-6204. (9480) Parties defendant—unknown claimants.

Quiet Title Action

In an action to quiet title to a house and lot, which included unknown claimants as defendants, where the scrivener of the deed erred in misnaming the corporate grantee, it was error to strike demurrer of corporate defendant alleging that the

complaint failed to state a cause of action against the defendant and defendant was not required to intervene. Williams v. Widows and Orphans Home, Veterans of Foreign Wars, of Eaton Rapids, Mich., — M —, 373 P 2d 948, 950.

93-6206 to 93-6208. (9482, 9483, 9485) Repealed.

Repeal

These sections (Sec. 2, Ch. 113, L. 1915; Sec. 1, Ch. 55, L. 1923; Secs. 2, 3, Ch. 70, L. 1931; Sec. 1, Ch. 15, L. 1947; Sec. 1,

Ch. 66, L. 1949; Sec. 1, Ch. 103, L. 1953; Sec. 1, Ch. 229, L. 1953), relating to service of summons by publication, were repealed by Sec. 2, Ch. 189, Laws 1963.

CHAPTER 64—QUO WARRANTO

93-6401. (9576) When proceedings may be instituted.

Right to Hold Office of Clerk of School District

In an action to test the right of defendant to occupy office of clerk of school district board of trustees, wherein plaintiff contended that as clerk of school district board of trustees, she was a public officer and could only be removed on

notice and hearing, application for leave to file a complaint in quo warranto was properly denied by the district court, plaintiff being only an employee and the rule for removal of public officers being inapplicable. State ex rel. Running v. Jacobson, — M —, 370 P 2d 483, 486.

CHAPTER 80—SUPREME COURT—APPEALS

93-8003. (9731) From what judgment or order an appeal may be taken.

Subd. 1—Final Judgments

Dismissal of Action

An appeal to the supreme court may be taken from a judgment dismissing an action which is based on an order sustaining a demurrer to the complaint. Monarch Lumber Co. v. Haggard, 139 M 105, 360 P 2d 794.

A judgment of dismissal entered following the sustaining of a demurrer, when the appellant has elected to stand upon his pleading, is appealable under this sec-

tion. Cahill-Mooney Constr. Co. v. Ayres, — M —, 373 P 2d 703, 704.

Order Sustaining Demurrer to Petition for Revocation of Probate of Will

An order sustaining a demurrer to petition for revocation of the probate of a subsequent will is an appealable order under this section as amended by Chapter 41, Session Laws 1941. In re Maricich's Estate, — M —, 371 P 2d 354, 355.

93-8005. (9733) Appeal—how taken.

Service of Notice

Service of transcript on appeal containing notice of appeal did not constitute service of notice of appeal under this section. State v. Alexander, — M —, 372 P 2d 426, 427.

Motion to dismiss appeal must be granted by the supreme court where failure to serve the notice of appeal as required by this section deprives the supreme court of jurisdiction. State v. Alexander, — M —, 372 P 2d 426, 427.

93-8017. (9745) Record on appeal from orders other than new trial.**References**

Puetz v. Carlson, 139 M 373, 364 P 2d 742, 743.

CHAPTER 85—NOTICES AND FILING AND SERVICE OF PAPERS

Section 93-8505. Appearance—notice after appearance.

93-8505. (9782) Appearance—notice after appearance. A defendant appears in an action when he answers, files a motion, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him, or has such appearance entered in open court. After appearance, a defendant or his attorney is entitled to notice of all subsequent proceedings of which notice is required to be given.

History: En. Sec. 494, p. 232, L. 1867; re-en. Sec. 574, p. 152, Cod. Stat. 1871; re-en. Sec. 478, p. 167, L. 1877; re-en. Sec. 478, 1st Div. Rev. Stat. 1879; re-en. Sec. 491, 1st Div. Comp. Stat. 1887; amd. Sec. 1834, C. Civ. Proc. 1895; re-en. Sec. 7149, Rev. C. 1907; re-en. Sec. 9782, R. C. M. 1921; amd. Sec. 1, Ch. 4, L. 1963. Cal. C. Civ. Proc. Sec. 1014.

Amendment

The 1963 amendment substituted "files a motion" for "demurs" in the first sentence, and deleted a third sentence which read, "But where a defendant has not appeared, service of notice or papers need not be made upon him unless he is imprisoned for want of bail."

CHAPTER 86—COSTS AND DISBURSEMENTS—COST BILL—SUIT IN FORMA PAUPERIS

Section 93-8613. Counsel fees on foreclosure.

93-8606. (9791) Costs of appeal discretionary with the court, etc.**Printing of Briefs**

The going rate charged by the only printing establishments in Great Falls, Montana, for printing briefs, even though more than double other available printing

prices within the state, is not unreasonable. *A. T. Klemens & Son v. Reber Plumbing & Heating Co.*, 139 M 433, 365 P 2d 525, 526.

93-8613. (9798) Counsel fees on foreclosure. In an action to foreclose a mortgage of real property, or a security interest in personal property, the court must allow as a part of the costs a reasonable attorney's fee, which shall be fixed by the court, any stipulation in the instrument or any agreement between the parties to the contrary notwithstanding. [Effective January 1, 1965.]

History: En. Sec. 1862, C. Civ. Proc. 1895; re-en. Sec. 7165, Rev. C. 1907; re-en. Sec. 9798, R. C. M. 1921; amd. Sec. 11-169, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "mortgage of real property, or a security interest in personal property" for "mortgage or pledge"; and substituted "instrument" for

"mortgage" in the latter part of the section.

Priority

The cost of extending abstract and attorney fees borne by mortgagee seeking foreclosure took priority over federal tax liens, which attached after the mortgage was in default. *Streeter Bros. v. Overfelt*, 202 F Supp 143, 146.

93-8618. (9802) What are costs and disbursements.**Depositions for Defendant's Benefit**

Discovery depositions or depositions for defendant's benefit cannot be charged to

plaintiff. *Davis v. Trobough*, 139 M 322, 363 P 2d 727, 729.

Printing of Briefs

The going rate charged by the only printing establishments in Great Falls, Montana, for printing briefs, even though more than double other available printing prices within the state, is not unreasonable. *A. T. Klemens & Son v. Reber Plumbing & Heating Co.*, 139 M 433, 365 P 2d 525, 526.

What are Allowable Costs

Persons named as defendants, but who were not served with process and did not enter an appearance, were not parties to the action, so were entitled to per diem

and mileage for attendance as witnesses. *Nelson v. Montana Iron Mining Co.*, — M —, 371 P 2d 874, 878.

The list of items under this section is exclusive in respect to allowable costs except as to cases taken out of its operation by special statute, by stipulation of the parties, or by rule of court. *Roseneau Foods, Inc. v. Coleman*, — M —, 374 P 2d 87, 91.

In an action by a landlord for unlawful detainer attorney's fees are not recoverable as damages or costs. *Roseneau Foods, Inc. v. Coleman*, — M —, 374 P 2d 87, 91.

93-8619. (9803) Bill of costs.**Computation of Five-day Period**

The five-day period, prescribed by this section, is computed from the day the court enters judgment, not from the day the court orally announces its decision. *Davis v. Trobough*, 139 M 322, 363 P 2d 727, 729.

Where judgment of nonsuit was entered by defendant on May 31, 1960, memorandum of costs, served by mail pursuant to

section 93-8504, R. C. M. 1947 (repealed by Laws 1961, ch. 13, sec. 84, effective January 1, 1962), postmarked June 5, 1960 met the requirements of this section since June 5th was the fifth day. In the computation of the time the first day is excluded as prescribed by section 90-407. *Davis v. Trobough*, 139 M 322, 363 P 2d 727, 730.

93-8622. (9806) Interest and costs included in judgment.**Wrongful Death**

Where the amount due a father for the wrongful death of his minor son was not ascertained (or ascertainable) until after the jury had returned its verdict, interest

was allowable only from the date the verdict was rendered. *Wyant v. Dunn*, — M —, 368 P 2d 917, 924. (Dissenting opinion, — M —, 368 P 2d 917, 924.)

CHAPTER 87—GENERAL PROVISIONS**93-8704. (9819) Successive actions on the same contract, etc.****Ranch Lease**

Tenants, after bringing action against landlords for breach of contract at end of 1957-1958 season, could treat each year of the ranch lease contract as a divisible part of the contract, where it contained

several divisible parts and ran for four successive years; each year of the farm operation and each year of the livestock operation was a separate phase to be separately performed and settled. *Green v. Wolff*, — M —, 372 P 2d 427, 434.

CHAPTER 89—UNIFORM DECLARATORY JUDGMENTS ACT**93-8901. (9835.1) Scope.****Application**

The Uniform Declaratory Judgments Act (93-8901 to 93-8916) does not apply to criminal cases. *Goff v. State*, — M —, 374 P 2d 862.

Denial of Writ of Prohibition

District court should have denied application for writ of prohibition to re-

strain board of equalization from enforcing amendments to regulations relating to corporation license tax allegedly due on patronage dividends of farm co-operatives where action for declaratory judgment could have been brought under sections 93-8901 to 93-8916. *State ex rel. Fulton v. District Court*, 139 M 573, 366 P 2d 435, 437.

93-8902. (9835.2) Power to construe, etc.**Persons Entitled to Bring Action**

Where a controversy existed between a

rural electric co-operative and an electric power company as to the right of the co-

operative to supply service to an addition to a city, the co-operative could have brought an action to determine its legal position before proceeding to install fa-

cilities to service the addition. *Montana Power Co. v. Park Electric Co-operative*, — M —, 371 P 2d 1, 6.

93-8911. (9835.5) Parties.

Intimate Connection of Parties

In an action under the Declaratory Judgments Act (93-8901 to 93-8916) by insured against insurer, which had issued a policy covering commercial hauling of trailer homes, the insurer's general agent, and local insurance agent, district court did not err in overruling insurer's demurrer on grounds of misjoinder of causes of action and parties defendant, contending that action against local agent being one for tort and action against the insurer and general agent being based on a contract

could not be combined, which defect could not be cured by a declaratory judgment, since the rights of all of the parties were intimately connected by the one transaction and the presence of all of the parties was necessary to a determination of their rights. The liability of the insurer depended upon the existence of an amendment to the contract and the liability of the local agent depended upon an absence of that same amendment. *Adams & Greig, Inc. v. National Indemnity Co.*, — M —, 375 P 2d 112, 115.

CHAPTER 90—CERTIORARI (WRIT OF REVIEW)

93-9002. (9837) When and by what courts granted.

Not Available Where Error may be Reached by Appeal

A writ of certiorari is not available in Montana to review question of alleged violations of federal constitutional rights

of petitioner concerning voluntariness of guilty plea, where he had not moved to withdraw the plea. *Brown v. State of Montana*, 202 F Supp 29, 30.

CHAPTER 91—MANDAMUS (WRIT OF MANDATE)

93-9103. (9849) Writ—when and upon what to issue.

Cancellation of Tax Deeds

Writ of mandamus to require county treasurer to cancel tax deeds upon certain real property to which petitioners asserted ownership was denied it being apparent that the county treasurer had no clear legal duty to cancel the tax deeds since the petitioners were involved in a quiet title action, to which county and tax debtors were parties, in the district court touching the gist of their petition for a writ of mandamus. *Sullivan v. Treasurer of Silver Bow County*, — M —, 370 P 2d 762.

Claim against County

District court properly quashed writ of mandate to compel county commissioners to allow claim of hospital since there existed a plain, speedy and adequate remedy at law under section 16-1801 [16-1808], which provides for an appeal to the district court from a disallowed claim. *State ex rel. Montana Hospital Assn. v. Pitch*, — M —, 372 P 2d 90, 91.

Denial of Writ

Mandamus is an extraordinary remedy and will not issue if there is a plain, speedy and adequate remedy at law. *Moran v. Board of County Commrs.*, 139 M 351, 363 P 2d 1073, 1074.

Judgment of district court quashing writ of mandate was well founded where property owner, who brought action in mandamus to compel county commissioners to refund sum paid to redeem land on ground that taxes had been erroneously collected, had adequate remedy at law to recover taxes under section 84-4176. *Moran v. Board of County Commrs.*, 139 M 351, 363 P 2d 1073, 1074.

When Mandamus Lies

The writ of mandamus is issued where there is not a plain, speedy and adequate remedy in the ordinary course of law. *Sullivan v. Treasurer of Silver Bow County*, — M —, 370 P 2d 762.

A person seeking a writ of mandamus must be entitled to have the defendant perform a clear legal duty. *Sullivan v. Treasurer of Silver Bow County*, — M —, 370 P 2d 762.

93-9111. (9857) If no answer be made, etc.**References**

Cited in *State v. Bare*, — M —, 377 P 2d 357, 360.

CHAPTER 92—PROHIBITION—WRIT OF

93-9201. (9861) Prohibition defined.**Jurisdiction**

District court had no jurisdiction to issue an alternative writ of prohibition to restrain board of equalization from enforcing amendments to regulations relating to corporation license tax allegedly due on patronage dividends of farm co-operatives, until after hearing before said

court, where tax could be paid under protest and action brought to recover as provided in section 84-4501 or an action for declaratory judgment could be brought under sections 93-8901 to 93-8916. *State ex rel. Fulton v. District Court*, 139 M 573, 366 P 2d 435, 437.

CHAPTER 97—FORCIBLE ENTRY AND UNLAWFUL DETAINER—ACTIONS FOR

93-9703. (9889) Unlawful detainer defined.**Notice to Quit**

Subdivision 2 of this section, which provides that in the case of agricultural lands there must be a "demand of possession or notice to quit" if the tenant "retained possession for more than sixty days after the expiration of his term" does not apply where there is a failure to establish the term of an oral farm lease. *Enott v. Hinkle*, — M —, 369 P 2d 413, 415.

An action in unlawful detainer cannot be maintained under this section if the tenant is lawfully in possession under a tenancy from year to year as provided by

section 42-203 without first giving notice thirty days prior to the anniversary date of the tenancy as prescribed in section 42-206. *Roseneau Foods, Inc. v. Coleman*, — M —, 374 P 2d 87, 91.

Stay of Action

A stay should have been granted in unlawful detainer action by landlord pending determination of tenant's action against landlord for specific performance of alleged option to re-lease premises. *Stanisich v. State Highway Commission*, — M —, 375 P 2d 1019, 1021.

CHAPTER 99—EMINENT DOMAIN

93-9904. (9936) Private property defined—classes enumerated.**References**

Cove Irrigation Co. v. Yellowstone Ditch Co., 139 M 281, 362 P 2d 543, 544.

93-9905. (9937) Facts necessary to be found before condemnation.**Condemnation of Covenants in a Deed**

In condemnation proceedings instituted by a mutual irrigation company, insolvency of plaintiff, which had acquired canal of defendant mutual irrigation company by contract containing covenants, as consideration for conveyance, under which it

obligated itself to furnish defendant company and its users with the same amount of water they had been receiving, was not a "good cause" or "necessity" for condemnation of such covenants by plaintiff. *Cove Irrigation Co. v. Yellowstone Ditch Co.*, 139 M 281, 362 P 2d 543, 545.

93-9912. (9944) Appointment and meeting of commissioners.**Supervision by Presiding Judge**

Although this section as amended in 1961 gives the presiding judge supervision over the commissioners, it does not grant

to the court the right to amend or alter their award. *State ex rel. Frelich v. District Court*, — M —, 375 P 2d 1016, 1018.

DECISIONS UNDER FORMER LAW

Submission of Verdict to Jury

The district court did not err in submitting verdicts to the jury by which damages were fixed in one sum and without separately stating the amount of damage for the taking and the damage to the remainder where all other witnesses testified as to one figure only, and gave their basis for it; state's counsel, on cross-examination, did not attempt nor could he, segregate the two items, they being interwoven in the very nature of the methods of appraisal; and it would not have been practical, even if possible, to have asked the jury to separately fix the figures be-

cause of the manner in which the testimony was produced by both sides. *State v. Heltborg*, — M —, 369 P 2d 521, 525.

Valuation of Property

Income could be used as a basis for arriving at market value in condemnation case where testimony of the various witnesses for both the landowners and the state, who explained their method of valuation, used the same general approach in determining the loss in value, which approach was labeled the "capitalization of income" approach. *State v. Heltborg*, — M —, 369 P 2d 521, 523.

93-9913. (9945) The date with respect to which compensation, etc.**Cross-Reference**

Compensation not to be paid for improvements after recording of highway plan by state highway commission, sec. 32-1615.3.

Market Value

Income could be used as a basis for arriving at market value in condemnation

case where testimony of the various witnesses for both the landowners and the state, who explained their method of valuation, used the same general approach in determining the loss in value, which approach was labeled the "capitalization of income" approach. *State v. Heltborg*, — M —, 369 P 2d 521, 523.

93-9914. (9946) Report of commissioners.**Alteration of Award**

A district court cannot alter or amend a commissioners' award after it has been filed with the district court and notice

thereof given to the parties by the clerk. *State ex rel. Frelich v. District Court*, — M —, 375 P 2d 1016, 1018.

93-9915. (9947) Appeal from assessment of commissioners.**Alteration of Award**

Improper order of district court in striking certain damages from commissioners' award could not be corrected where an appeal had been taken from the award. *State ex rel. Frelich v. District Court*, — M —, 375 P 2d 1016, 1018.

of the commissioners appointed to appraise damages, it was reversible error for the state to try to impeach the witness by using the commission award in order to get the whole commission award before the jury. *State v. Bare*, — M —, 377 P 2d 357, 359.

Expert Testimony

On appeal by state from condemnation award in proceeding to acquire land for interstate highway right of way where it was made clear on direct examination that expert witness for landowner had been one

Right to Receive Damages

The state cannot appeal from decision of commissioners contesting right of county to receive damages when it did not raise the issue in the pleading stage. *State v. Park County*, — M —, 376 P 2d 998.

93-9921. (9953) Costs, allowance and apportionment of.**Expert Witness Fees**

This section applies to costs recognized and allowed by statute but it does not

add expert witness fees other than as an ordinary witness. *State v. Heltborg*, — M —, 369 P 2d 521, 525.

CHAPTER 201—ARBITRATION—SUBMISSION TO

93-201-1. (9972) What may be submitted to arbitration, and when.**Voluntary Submission of Disputes**

This section contemplates voluntary submission of disputes in existence at the

time of the submission. *Green v. Wolff*, — M —, 372 P 2d 427, 433.

CHAPTER 401—EVIDENCE—GENERAL PRINCIPLES OF

Section 93-401-22. Writings—how construed.

93-401-1. (10505) One witness sufficient to prove a fact.

References

Dorall v. Davis, 139 M 69, 360 P 2d 409.

93-401-6. (10510) Declarations of predecessor in title evidence.

Water Rights

Defendants failed to establish a prescriptive water right regardless of priority of rights, where depositions which were self-serving declarations were not admis-

sible as ancient documents or public records as exceptions to hearsay rule and no other satisfactory proof of possession or use of the water was shown. *King v. Schultz*, — M —, 375 P 2d 108, 110.

93-401-13. (10517) An agreement reduced to writing deemed the whole.

Mistake and Imperfection of Writing

In action by sellers of hotel business, including personal property, against buyers for balance due on contract, answer setting up affirmative defenses, which pleaded representations and warranties of seller concerning the leasing of the premises

which the buyers relied on, was sufficiently clear to comply with this section as against motion to strike on the ground that the allegations tended to vary the terms of a written contract. *Swecker v. Badura*, — M —, 377 P 2d 752, 754.

93-401-17. (10521) The circumstances to be considered.

References

Peerless Casualty Co. v. Mountain States Mut. Casualty Co., 283 F 2d 268, 278.

93-401-18. (10522) Terms to be construed in their general acceptance.

Reinsurance Contract

Where amended agreement between automobile insurer and reinsurer was the same as that contained in prior agreement, which the parties had interpreted as contended for by the insurer, findings that agreement was ambiguous, and that the

parties did not intend to give the words in the amendment a different meaning than that given in the agreement, being supported by substantial evidence, warranted judgment in favor of insurer. *Peerless Casualty Co. v. Mountain States Mut. Casualty Co.*, 283 F 2d 268, 276.

93-401-22. (10526) Writings—how construed. A written notice, as well as every other writing, is to be construed according to the ordinary acceptance of its terms. Thus, a notice to the drawers or endorsers of a draft or promissory note, that it has been protested for want of acceptance or payment must be held to import that any necessary presentment for acceptance or payment has been made, that the instrument has been dishonored, and that the holder looks for payment to the person to whom the notice is given. [Effective January 1, 1965.]

History: En. Sec. 619, p. 200, L. 1877; re-en. Sec. 619, 1st Div. Rev. Stat. 1879; re-en. Sec. 637, 1st Div. Comp. Stat. 1887; re-en. Sec. 3141, C. Civ. Proc. 1895; re-en. Sec. 7882, Rev. C. 1907; re-en. Sec. 10526, R. C. M. 1921; amd. Sec. 11-170, Ch. 264, L. 1963. Cal. C. Civ. Proc. Sec. 1865.

for "bill of exchange" in the early part of the second sentence; substituted "any necessary presentment for acceptance or payment has been made, that the instrument has been dishonored" in the second sentence for "the same has been duly presented for acceptance or payment, and the same refused"; and made a minor change in punctuation.

Amendment

The 1963 amendment substituted "draft"

CHAPTER 501—EVIDENCE—JUDICIAL NOTICE OF FACTS AND FOREIGN LAWS

93-501-2. Judicial notice of laws of other states.

Foreign Law

Once the court has been invited to take judicial notice of particular foreign law, then the court must make an independent

determination as to which is the correct foreign law. *H. & J. Gross, Inc. v. Fraser*, — M —, 368 P 2d 163, 165.

93-501-5. Notice to adverse party, when required.

Foreign Law

Where defendant invited the court to take judicial notice of certain Pennsylvania statutes to support his argument that a writ of summons must be served to gain jurisdiction over him, he could not complain that lack of notice prevented

the introduction of other parts of that foreign law. Once the door was opened by the defendant there was no longer a question of notice. At that point it became the duty of the court to find the correct foreign law. *H. & J. Gross, Inc. v. Fraser*, — M —, 368 P 2d 163, 165.

CHAPTER 701—EVIDENCE—WITNESSES

93-701-3. (10535) Persons who cannot be witnesses.

Subd. 3

Purpose

The purpose of this subdivision is to prevent the living party by reason of the death of the adversary, gaining an undue advantage over the administrator, and to remove the temptation for the commission of perjury by a party in the instances noted being permitted to testify to a communication or transaction as to which in all probability there can be no denial by a living person. *Novak v. Novak*, — M —, 377 P 2d 367, 369.

Wife of Claimant

In an action by a son for care of his deceased father, where another witness had testified as to conversation with deceased, it was proper to permit wife of plaintiff to testify as to conversation between her husband and the deceased as she had no direct legal or pecuniary interest in the event. Not being a party to the action she had no direct right growing out of the marital relationship which would attach to the money recovered. *Novak v. Novak*, — M —, 377 P 2d 367, 369.

CHAPTER 1001—EVIDENCE—PUBLIC WRITINGS

93-1001-23. (10561) What deemed adjudged in a judgment.

Title to Corporate Stock

Denial by probate court of motion of brother of decedent to vacate decree of distribution, which confirmed in decedent's widow whatever title passed to her in

certain stock by virtue of death of decedent, was not an adjudication of title to the stock as between the widow and the brother. *Roberts v. Roberts*, 286 F 2d 647, 650.

CHAPTER 1301—EVIDENCE—INDIRECT—INFERENCES AND PRESUMPTIONS

93-1301-5. (10604) Presumptions may be controverted, when.

Oral Lease

The presumption, under section 42-203, that when a tenant, pursuant to an oral agreement, enters into possession of real property his hiring of the property is pre-

sumed to be for one year, is rebuttable since it is not listed as a conclusive presumption in section 93-1301-6. *Roseneau Foods, Inc. v. Coleman*, — M —, 374 P 2d 87, 90.

93-1301-6. (10605) Specification of conclusive presumptions.

Oral Lease

Since the provision of section 42-203 that the hiring of real property under an oral lease is presumed to be for one year is not

listed as a conclusive presumption in this section it is a rebuttable presumption under 93-1301-5. *Roseneau Foods, Inc. v. Coleman*, — M —, 374 P 2d 87, 90.

93-1301-7. (10606) All other presumptions may be controverted.**Subd. 34****Ancient Documents**

Defendants failed to establish a prescriptive water right regardless of priority of rights, where depositions which were self-serving declarations were not admissible as ancient documents or public records as exceptions to hearsay rule and no other satisfactory proof of possession or use of the water was shown. *King v. Schultz*, — M —, 375 P 2d 108, 110.

Ancient documents may be admitted in evidence in proof of the facts recited

therein, provided the writers would have been competent to testify as to such facts. *King v. Schultz*, — M —, 375 P 2d 108, 110.

The ancient document rule, subd. 34 of this section, does not change the basis for admission of evidence other than as to the genuineness of the document. *King v. Schultz*, — M —, 375 P 2d 108, 110.

References

First Nat. Bank in Billings v. First Bank Stock Corp., 197 F Supp 417, 425.

**CHAPTER 1401—EVIDENCE—INDISPENSABLE—UNWRITTEN
AGREEMENTS—CONCLUSIVE—UNANSWERABLE**

Section 93-1401-7. Agreement not in writing—when invalid.

93-1401-2. (10608) To prove perjury and treason, etc.**Operation and Effect**

This rule has no application where the accused admits on the stand, on the trial

for the offense, that he has committed the offense. *State v. Johnson*, — M —, 374 P 2d 504, 506.

93-1401-7. (10613) Agreement not in writing—when invalid. In the following cases the agreement is invalid, unless the same or some note or memorandum thereof be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:

1. An agreement that by its terms is not to be performed within a year from the making thereof.

2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in section 30-105.

3. An agreement made upon consideration of marriage, other than a mutual promise to marry.

4. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

This section shall not apply to agreements subject to the Uniform Commercial Code. [Effective January 1, 1965.]

History: En. Sec. 3276, C. Civ. Proc. 1895; re-en. Sec. 7969, Rev. C. 1907; re-en. Sec. 10613, R. C. M. 1921; amd. Sec. 11-171, Ch. 264, L. 1963. Cal. C. Civ. Proc. Sec. 1973.

Amendment

The 1963 amendment deleted former paragraph 4, for text of which see parent

volume; redesignated former paragraph 5 as 4; and added the final paragraph.

Oral Lease

An oral lease for more than a year is invalid, and evidence of the agreement and secondary evidence of its contents cannot be introduced. *Roseneau Foods, Inc. v. Coleman*, — M —, 374 P 2d 87, 89.

CHAPTER 1901—EVIDENCE—GENERAL RULES OF EXAMINATION

93-1901-11. (10668) How impeached.**Denial of Effort of Impeachment**

Defendant convicted of burglary in the first degree was granted a new trial because of refusal of trial court to allow defendant's offer of evidence of reputation

of alleged accomplice for truth and veracity as such action was a denial of effort of impeachment of the state's only eyewitness to the burglary. *State v. Laverdure*, — M —, 370 P 2d 489, 492.

CHAPTER 2702—COMMENCEMENT OF ACTION—SERVICE OF
PROCESS, PLEADINGS, MOTIONS, AND ORDERS

Section 93-2702-2. Persons subject to jurisdiction—process—service.

93-2702-2. (Rule 4) Persons subject to jurisdiction—process—service. A.
* * * [Same as 1961 Supplement.]

B. [JURISDICTION OF PERSONS].

(1) Subject to Jurisdiction. All persons found within the state of Montana are subject to the jurisdiction of the courts of this state. In addition, any person is subject to the jurisdiction of the courts of this state as to any claim for relief arising from the doing personally, through an employee, or through an agent, of any of the following acts:

(a) to (f). * * * [Same as 1961 Supplement.]

(2). * * * [Same as 1961 Supplement.]

C. PROCESS.

(1). * * * [Same as 1961 Supplement.]

(2) [Summons]—Form. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint. In an action brought to quiet title to real estate, there shall be added to the foregoing, the following: "This action is brought for the purpose of quieting title to the land situated in _____ County, Montana, and described as follows: (Here insert description of land.)." The provisions of sections 84-4165, R.C.M., and 93-6228, R.C.M., as well as the provisions hereinafter prescribed in D(5) (h), must be complied with.

D. SERVICE.

(1) to (3). * * * [Same as 1961 Supplement.]

(4) Other Service. All process in any form of action shall be served in the manner specified in this rule with the exception that whenever a statute of this state or an order of the court or a citation by the court made pursuant thereto provides for the service of a notice or of an order or of a citation in lieu of summons upon any person, service shall be made under the circumstances and in the manner prescribed by the statute or order or citation; and with the further exception that all persons are required to comply with the provisions of sections 40-2819, 40-3405, 40-3406, 40-3423, 40-3424, 93-6229, 93-6230, and 93-6232, when the action pertains to the provisions of such sections.

(5) Service by Publication—When Permitted—Effect—Manner—Proof.

(a) and (b). * * * [Same as 1961 Supplement.]

(c) Filing of Pleading and Affidavit for Service by Publication, and Order for Publication. Before service of the summons by publication is authorized in any case, there shall be filed with the clerk in the district court of the county in which the action is commenced (i) a pleading setting forth a claim in favor of the plaintiff and against

the defendant in one of the situations defined in 5(a) above; and (ii) in situations defined in (5)(a)(i), (5)(a)(ii), (5)(a)(iii), upon return of the summons showing the failure to find any defendant designated in the complaint, an affidavit stating that such defendant resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons; or that the defendant, if a domestic or foreign corporation, has no agent for the service of process, nor managing nor business agent, cashier, secretary, or other officer who can, after due diligence, be found within the state; or, if the defendant is an unknown claimant, by showing that he has made diligent search and inquiry for all persons who claim, or might claim any right, title, estate, or interest in, or lien, or encumbrance upon, such property, or any thereof, adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any right of dower, inchoate or accrued, and that he has specifically named as defendants in such action all such persons whose names can be ascertained; such affidavit shall be sufficient evidence of the diligence of any inquiry made by the affiant, if the affidavit recite the fact that diligent inquiry was made, and it need not detail the facts constituting such inquiry; and (iii) in the situation defined in (5)(a)(iv) above, there must first be presented to the court proof that a valid attachment or garnishment has been effected. Upon complying herewith, the plaintiff may obtain an order for the service of summons to be made upon the defendants by publication, which order may be issued by either the judge or the clerk of court.

(d) to (f). * * * [Same as 1961 Supplement.]

(g) When Service by Publication or Outside State Complete. Service by publication is complete on the date of the last publication of the summons, or in case of personal service of the summons and complaint upon the defendant out of the state, on the date of such service.

(h). * * * [Same as 1961 Supplement.]

(6) Service on Secretary of State. Unless otherwise provided by statute, whenever the secretary of state of the state of Montana has been appointed, or is deemed by law to have been appointed, as the agent to receive service of process for any person who cannot with due diligence be found or served personally within Montana, the party, or his attorney, shall make an affidavit stating the facts showing that the secretary of state is such agent, and stating the residence and last known post-office address of the person to be served, and shall file such affidavit with the clerk of the court in which such action is pending, accompanied by sufficient copies of such affidavit and of the summons and complaint for service upon the secretary of state, or whenever service is to be made upon certain corporations as provided in section 93-3008 of these codes, and the requirements of said section 93-3008 have been complied with; and there has also been deposited with the clerk of the court in which such action is pending the sum of five dollars to be paid to the secretary of state as a fee for the receipt of such service; then the clerk shall forward three copies of the

summons, complaint and affidavit, and the fee, to the sheriff of Lewis and Clark county for service on the secretary of state or his deputy by delivering thereto, and the sheriff shall make due return of such service.

Such service on the secretary of state shall be sufficient personal service upon the person to be served, provided that notice of such service and a copy of the summons and complaint are forthwith sent by registered or certified mail by the secretary of state to the party to be served at his last known address, marked "Deliver to Addressee Only" and "Return Receipt Requested," and provided further that such return receipt shall be received by the secretary of state purporting to have been signed by said addressee, or the secretary of state shall be advised by the postal authority that delivery of said registered or certified mail was refused by said addressee. The date on which the secretary of state receives said return receipt, or advice by the postal authority that delivery of said registered or certified mail was refused, shall be deemed to be the date of service, and the court in which the action is pending may order such continuance as may be necessary to afford reasonable opportunity to defend the action. As an alternative to sending the notice and summons and complaint by registered or certified mail, as here provided, the secretary of state may cause notice of the service and a copy of the summons and complaint to be served by any qualified law enforcement officer, in accord with the procedure set out in D(1), (2) and (3) of this rule ~~[section]~~.

The secretary of state shall make an affidavit as to the service on him, and as to his mailing a copy of the summons and complaint and notice of such service, and as to the receipt of the return receipt or advice of the refusal of registered mail, and the respective dates thereof, and shall transmit such affidavit to the clerk of the court in which the action is pending, and it shall be filed in the cause. The secretary of state shall keep on file in his office a copy of the summons and complaint, and of his affidavit, and also keep a record which shall show the day and hour and manner of such service.

(7) to (10). * * * [Same as 1961 Supplement.]

History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963.

Amendment

The 1963 amendment substituted "claim for relief" for "cause of action" in paragraph B (1); added the second and third sentences to paragraph C (2); substituted paragraph D (4) for a paragraph reading, "(4) Other Service. Whenever a statute of this state or an order of the court made pursuant thereto provides for the service of a summons or of a notice or of an order in lieu of summons upon a party not an inhabitant of or found within the state, service shall be made under the circumstances and in the manner prescribed by the statute or order"; inserted the words "in situations defined in (5)(a)(i), (5)(a)(ii), (5)(a)(iii)" at the beginning of clause (ii) of paragraph D (5) (c); added the final clause to the next to last sentence in paragraph D (5) (c); added the final

sentence of paragraph D (5) (c); substituted "on the date of" for "upon the expiration of 20 days after" and "upon the expiration of 20 days after the date of" in paragraph D (5) (g); inserted the words "or whenever service is to be made upon certain corporations as provided in section 93-3008 of these codes, and the requirements of said section 93-3008 have been complied with" in paragraph D (6); increased the secretary of state's fee specified in paragraph D (6) from \$3.00 to \$5.00; and made minor changes in phraseology and punctuation.

Repealing Clause

Section 2 of Ch. 189, Laws 1963 read "That the following sections of the Revised Codes of Montana, 1947, sections 53-204, 93-3004, 93-3009, 93-3010, 93-3019, 93-6206, 93-6207 and 93-6208, and all acts and parts of acts in conflict herewith, are hereby repealed."

DECISIONS UNDER FORMER LAW

Appearance by Defendant

A voluntary appearance by a defendant is equivalent to personal service of the summons and a copy of the complaint upon him. *Strnod v. Abadie*, — M —, 376 P 2d 730, 733.

Defendants Not Served

Persons named as defendants, but who were not served with process and did not enter an appearance, were not parties to the action for the purpose of determining their entitlement to witness fees. *Nelson v. Montana Iron Mining Co.*, — M —, 371 P 2d 874, 878.

93-2702-3. (Rule 5) Service and filing of pleading and other papers.

DECISIONS UNDER FORMER LAW

Denial of Rehearing

Where notice denying rehearing, required by section 92-833, was mailed by industrial accident board to claimant on February 24, 1960 and received February 25, 1960, notice of claimant's appeal to the district court served and filed on March 21, 1960, upon attorneys for the employer and insurer, was filed within time. *Antoff v. Greyhound Post Houses, Inc.*, 139 M 252, 362 P 2d 546, 547.

Notice by Mail

The supreme court lacked jurisdiction to entertain and determine an appeal when service of notice of appeal was made by mail and counsel for both parties resided in the same town. *Green v. Dan Morrison & Sons*, — M —, 368 P 2d 570, 571.

93-2702-4. (Rule 6) Time.

DECISIONS UNDER FORMER LAW

Memorandum of Costs

Where judgment of nonsuit was entered by defendant on May 31, 1960, memorandum of costs, served by mail postmarked June 5, 1960 met the requirements of sec-

tion 93-8619 since June 5th was the fifth day. In the computation of the time the first day is excluded as prescribed by section 90-407. *Davis v. Trobough*, 139 M 322, 363 P 2d 727, 730.

CHAPTER 2703—PLEADINGS AND MOTIONS

Section 93-2703-6. Defenses and objections—when and how presented—by pleading or motion—motion for judgment on pleadings.

93-2703-2. (Rule 8) General rules of pleading.

DECISIONS UNDER FORMER LAW

Voidable Release

Where plaintiff, in his reply, alleged that the release pleaded by defendant's answer was procured through fraud, raising an issue of fact concerning a voidable re-

lease, whether or not there was sufficient fraud to avoid the release was a question for the jury to determine under proper instruction. *Westfall v. Motors Ins. Corp.*, — M —, 374 P 2d 96, 99.

93-2703-6. (Rule 12) Defenses and objections—when and how presented—by pleading or motion—motion for judgment on pleadings. (a). * * *
[Same as 1961 Supplement.]

(b) **HOW PRESENTED.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) insufficiency of process, (4) insufficiency of service of process, (5) failure to state a claim upon which relief can be granted, (6) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a

further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (5) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56 ~~[93-2703-3]~~, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56 ~~[93-2703-3]~~.

(c). * * * [Same as 1961 Supplement.]

(d) **PRELIMINARY HEARINGS.** The defenses specifically enumerated (1)-(6) in subdivision (b) of this rule ~~[section]~~, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule ~~[section]~~ shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) to (h). * * * [Same as 1961 Supplement.]

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963.

Amendment

The 1963 amendment deleted from the first sentence of subd. (b) a clause reading, "(3) improper venue"; and made the necessary other changes in numbering of clauses and internal references.

Motion to Dismiss

Upon motions to dismiss under subd. (b) of this rule the allegations of the complaint must be viewed in a light most favorable to plaintiffs, admitting and accepting as true all facts well-pleaded. *Fulton v. Farmers Union Grain Terminal Assn.*, — M —, 374 P 2d 231, 236.

93-2703-9. (Rule 15) Amended and supplemental pleadings.

DECISIONS UNDER FORMER LAW

Failure of Proof

Where contract alleged was not proven but rather an attempt was made to prove an entirely different contract, there was not a variance but a failure of proof on behalf of the plaintiff within section 93-3903, R. C. M. 1947 (repealed by Laws 1961, ch. 13, sec. 84, effective January 1, 1962). *Fraser v. Williams*, — M —, 367 P 2d 769, 770.

Fatal Variance

In action by contractors against defendants to recover for work and labor alleged to have been performed and for materials alleged to have been furnished and delivered to defendants there was no fatal variance which misled or prejudiced defendants when the complaint although based on theory of quantum meruit, alleged that the labor and materials were furnished at the special instance and

request of defendants, and an express contract, full performance of which was prevented by defendants, was proven at trial. *Puetz v. Carlson*, 139 M 373, 364 P 2d 742, 746.

Relief From Judgments, Orders, or Other Proceedings

Default Judgment

District court did not abuse its discretion by refusing to open default taken on April 28, 1960 where defendant did not move to open the default until December 15, 1960. *Strnod v. Abadie*, — M —, 376 P 2d 730, 732.

The portion of section 93-3905, which allowed answer within one year after rendition of judgment did not cover a case where the district court acquired jurisdiction over defendant when he voluntarily appealed to answer the original complaint

through counsel. *Strnod v. Abadie*, — M —, 376 P 2d 730, 733.

Striking of Amended Pleading

Even though an amended pleading ordi-

narily renders the original pleading functus officio, the original pleading is reinstated if the amended pleading is stricken. *Monarch Lumber Co. v. Haggard*, 139 M 105, 360 P 2d 794.

CHAPTER 2704—PARTIES

93-2704-2. (Rule 18) Joinder of claims and remedies.

DECISIONS UNDER FORMER LAW

Fraudulent Conveyance

Under section 29-101 et seq., the Uniform Fraudulent Conveyances Act, a creditor may join with his cause of action alleging indebtedness a second cause of action alleging that debtor's giving of mortgages and conveyance of certain prop-

erty was without fair consideration and made him insolvent, and a third cause of action alleging that after executing the mortgages, he had unreasonably small capital in his business. *Cahill-Mooney Constr. Co. v. Ayres*, — M —, 373 P 2d 703, 709.

93-2704-3. (Rule 19) Necessary joinder of parties.

DECISIONS UNDER FORMER LAW

Quiet Title Action

In an action to quiet title to a house and lot, which included unknown claimants as defendants, where the scrivener of the deed erred in misnaming the corporate grantee, it was error to strike demurrer of corporate defendant alleging that the

complaint failed to state a cause of action against the defendant and defendant was not required to intervene. *Williams v. Widows and Orphans Home, Veterans of Foreign Wars of Eaton Rapids, Mich.*, — M —, 373 P 2d 948, 950.

93-2704-4. (Rule 20) Permissive joinder of parties.

DECISIONS UNDER FORMER LAW

Intimate Connection of Parties

In an action under the Declaratory Judgments Act (93-8901 to 93-8916) by insured against insurer, which had issued a policy covering commercial hauling of trailer homes, the insurer's general agent, and local insurance agent, district court was not in error in overruling insurer's demurrer on grounds of misjoinder of causes of action and parties defendant, contending that action against the local agent being one for tort and action against the insurer and general agent being based on

a contract could not be combined, which defect could not be cured by a declaratory judgment, since the rights of all of the parties were intimately connected by the one transaction and the presence of all of the parties was necessary to a determination of their rights. The liability of the insurer depended upon the existence of an amendment to the contract and the liability of the local agent depended upon an absence of that same amendment. *Adams & Gregoire, Inc. v. National Indemnity Co.*, — M —, 375 P 2d 112, 115.

93-2704-8. (Rule 24) Intervention.

DECISIONS UNDER FORMER LAW

Interest in the Matter in Litigation

A retail merchant, a citizen and resident of Montana, who competed with other merchants giving or not giving trading stamps, had an interest in an action by another retailer against the state board of equalization for a declaratory judgment that Chapter 153, Laws of 1961 (sections 84-2805 to 84-2812), providing for the

licensing of any merchant advertising or giving trading stamps or devices defined in such act, was unconstitutional, and should have been permitted to intervene under this section in support of the constitutionality of such statute. *State ex rel. Abel v. District Court*, — M —, 368 P 2d 572, 576.

Right to Disqualify Judge

An intervener, being a party to the action, is entitled to avail himself of the provisions of section 93-901 and in a proper situation may file an affidavit of disqualification. *Allman v. Potts*, — M —, 371 P 2d 11, 13.

Wrongful Death Action

District court was directed to deny petition of decedent's divorced wife, guardian

ad litem of decedent's and her children, to intervene in action for wrongful death under section 93-2810 commenced by the widow as administratrix and trustee for the decedent's minor children, and to strike from the files the complaint in intervention as an attempted substitution of party plaintiffs in a wrongful death action. *State ex rel. Carroll v. District Court*, 139 M 367, 364 P 2d 739, 742.

CHAPTER 2705—DEPOSITIONS AND DISCOVERY

93-2705-1. (Rule 26) Depositions pending action.

DECISIONS UNDER FORMER LAW

Admission of Deposition

District court did not err in failing to admit into evidence a deposition of witness which was taken before the trial where default had been entered at the time of trial, although he was a party to the record; his testimony at the trial

did not materially deviate from that contained in the deposition; and material matters covered by the deposition were not omitted in his testimony at the trial. *Walsh-Anderson Co. v. Keller*, 139 M 210, 362 P 2d 533, 538.

CHAPTER 2706—TRIALS

Section 93-2706-4. Dismissal of actions.

93-2706-4. (Rule 41) Dismissal of actions. (a) to (d). * * * [Same as 1961 Supplement.]

(e) No action heretofore or hereafter commenced shall be further prosecuted, and no further proceedings shall be had therein, and all actions heretofore or hereafter commenced shall be dismissed by the court in which the same shall have been commenced, on its own motion, or on the motion of any party interested therein, whether named in the complaint as a party or not, unless summons shall have been served and return made within three years after the commencement of said action, or unless appearance has been made by the defendant or defendants therein within said three years.

History: En. Sec. 41, Ch. 13, L. 1961; amd. Sec. 1, Ch. 111, L. 1963.

Amendment

The 1963 amendment added subd. (e).

DECISIONS UNDER FORMER LAW

Judgment of Nonsuit

Trial court did not err in granting a nonsuit against plaintiff in action by truck driver against automobile owner for injuries arising out of accident when the daughter of the owner of the automobile forced truck off the highway where plain-

tiff did not prove ownership or the identity of the automobile involved in the accident as belonging to defendant and the record was silent as to any proof upon the question of agency. *Castle v. Thisted*, 139 M 328, 363 P 2d 724, 726.

93-2706-6. (Rule 43) Evidence.

DECISIONS UNDER FORMER LAW

Re-examination of Adverse Witness

Where plaintiff in his case in chief called one of the defendants to the wit-

ness stand, and cross-examined him as permitted by section 93-1901-9, trial judge did not abuse his discretion in denying motion

of counsel for defendants for right to re-examine such defendant, where he was called to the stand in defendants' case in chief, less than two hours after he had been excused as an adverse witness, and

counsel for defendants completed their examination of him that same day. *Wyant v. Dunn*, — M —, 368 P 2d 917, 921. (Dissenting opinion, — M —, 368 P 2d 917, 924.)

93-2706-13. (Rule 50) Motion for a directed verdict.

Disqualification of Trial Judge

This rule does not apply to the disqualification of a trial judge which is

governed by section 93-901. *State ex rel. Bellon v. District Court*, — M —, 373 P 2d 314, 316.

93-2706-14. (Rule 51) Instructions to jury—objection.

DECISIONS UNDER FORMER LAW

Objections Available on Appeal

An objection to an instruction which was not advanced at the time of settling the instructions is not properly available on appeal to the supreme court. *Holland Furnace Co. v. Rounds*, 139 M 75, 360 P 2d 412.

objection to an instruction before the trial court they were precluded from raising it in the supreme court on appeal. *Franck v. Hudson*, — M —, 373 P 2d 951, 953.

A mere objection to an instruction without assignment of the specific reason for the objection is not a proper objection. *Adams & Gregoire, Inc. v. National Indemnity Co.*, — M —, 375 P 2d 112, 116.

Specific Objections Required

Where plaintiffs did not make a specific

CHAPTER 2707—JUDGMENT

93-2707-2. (Rule 55) Default.

DECISIONS UNDER FORMER LAW

Negligence of Attorney

Attorney was deprived of the right to practice in the courts of Montana for 45 days where he was guilty of deliberate falsehood in telling client that case filed in April 1956 was at issue and was await-

ing trial, the debtor in the action having entered no appearance and default judgment such as was entered on April 11, 1961, could have been entered in June of 1956. *In re Hirst*, — M —, 368 P 2d 157, 158.

93-2707-5. (Rule 58) Entry of judgment.

DECISIONS UNDER FORMER LAW

Final Judgment

Judgment became final on April 20, 1959, when entered by the clerk of the district court, although appellant's counsel moved

to modify the judgment on May 21, 1959, and the trial court overruled the motion on August 14, 1959. *Hursh v. Mon-O-Co. Oil Corp.*, 139 M 302, 363 P 2d 485, 486.

93-2707-6. (Rule 59) New trials—amendment of judgments.

Condemnation Proceedings

Subd. (e) of this rule did not apply in determining right of district to alter or amend an award of damages as found by the report of commissioners in condemnation proceeding under section 93-9914 after the award had been filed with the district court and notice thereof given to the parties by the clerk as the commissioners'

award was not a judgment. *State ex rel. Frelich v. District Court*, — M —, 375 P 2d 1016, 1018.

Disqualification of Trial Judge

This rule does not apply to the disqualification of a trial judge which is governed by section 93-901. *State ex rel. Bellon v. District Court*, — M —, 373 P 2d 314, 316.

93-2707-7. (Rule 60) Relief from judgment or order.

DECISIONS UNDER FORMER LAW

Excusable Neglect

Trial court did not abuse its discretion in refusing to vacate a default judgment

where the facts advanced as "excusable neglect" were that defendant's counsel failed to read a letter from plaintiff's

counsel for two or three weeks because he was occupied with other urgent matters and because he assumed that the letter was on another matter that was not ur-

gent. (Angstman and Adair dissenting.)
United States Rubber Co. v. Community Gas & Oil Co., 139 M 36, 359 P 2d 375.

93-2707-8. (Rule 61) **Harmless error.**

DECISIONS UNDER FORMER LAW

Hypothetical Questions

Defendant tractor owner was not prejudiced by the court's allowing highway patrolman to answer hypothetical questions which assumed, among other facts, that a driver in a position the same as that of plaintiff's decedent was watching the right side of the road as he passed the glare of the tractor headlights where it had been previously established that decedent could not have avoided hitting the tractor-trailer had he been looking directly ahead. Hurly v. Star Transfer Co., — M —, 376 P 2d 504, 507.

Modification of Judgment

In action by sellers of hotel business against buyers for balance due on contract, findings of district court that damages found for buyers would never exceed amount owed to sellers, and denial of recovery to sellers, did not void judgment and it was modified on appeal giving judgment to sellers for difference between that owed on the contract and total damages that buyers would sustain. Swecker v. Badura, — M —, 377 P 2d 752, 756.

CHAPTER 2711—GENERAL PROVISIONS

- Section 93-2711-6. Appendix of forms.
93-2711-7. Special statutory proceedings under Rule 81.

93-2711-6. Appendix of forms.

[Forms 1 to 22. Same as 1961 Supplement.]

Form 23. Supersedeas Bond.

We the undersigned jointly and severally acknowledge that we and our personal representatives are jointly bound to pay to (respondent) the sum of \$.....

(Appellant) has appealed from that certain judgment (or order) (insert descriptive facts) and has obtained an order staying execution from the district court, and the condition of this bond is that if the judgment (or order) appealed from, or any part thereof, be affirmed, or the appeal dismissed, the appellant will pay the amount directed to be paid by the judgment (or order) or the part of such amount as to which the judgment (or order) is affirmed, if affirmed only in part, and all damages and costs which may be awarded against the appellant upon the appeal. If such payment be made then this bond is void, otherwise to be and remain in full force and effect. If the appellant does not make such payment within thirty days after the filing of the remittitur from the supreme court in the court from which the appeal is taken, judgment may be entered on motion of the respondent in his favor against the sureties for such amount, together with the interest that may be due thereon, and the damages and costs which may be awarded against the appellant upon the appeal.

Appellant	Address
Surety	Address
Surety	Address

(Justification of Sureties)

Form of bond approved.

Judge

(This form with necessary alterations may be used in any situation covered by Rule 62 [93-2707-9].)

History: En. Sec. 80, Ch. 13, L. 1961;
amd. Sec. 1, Ch. 3, L. 1963.

Amendment

The 1963 amendment added Form 23.

93-2711-7. (Table A) Special statutory proceedings under Rule 81.

Following is a list of sections of the Revised Codes of Montana, 1947, as amended, pertaining to special proceedings which are excepted from these rules in so far as they are inconsistent or in conflict with the procedure and practice provided by these rules:

Review of beer license, revocation, suspension or denial.....	4-342
Review of liquor license revocation, suspension, or denial.....	4-425
Closed bank proceedings.....	5-1107
Review of decision of superintendent of banks.....	5-1108
Appeal from decision of superintendent of banks.....	5-1112
Closed banks, procedure for disposition of assets.....	5-1118
Appointment of trustee of cemetery association.....	9-121
Removal of dedication of property for cemetery.....	9-816, 9-817
Proceedings re dependent and neglected children.....	Title 10, Ch. 5
Juvenile courts	Title 10, Ch. 6
Appeal from city approval of emergency expenditures.....	11-1409
Appeal from appraisalment of damage to landowner caused by change of grade of street or sidewalk.....	11-2604, 11-2605
Review of decision of municipal board of adjustment re zoning regulations.....	11-2707
Determination of title to lots in entry townsites.....	11-3014, 11-3026
Formation of agricultural or co-operative corporations or districts	14-302 to 14-304
Creation of indebtedness of same.....	14-319, 14-320
Lost or destroyed stock certificates.....	15-644
Dissolution of corporations	15-1108 to 15-1114
Assignments for benefit of creditors.....	18-314 to 18-326
Contesting nominations	23-926 to 23-928
Recount of votes	23-2301 to 23-2304
Appeal from revocation of oleomargarine license.....	27-517
Appeal from revocation of driver's license.....	31-152
Appraisalment of homestead subject to execution.....	33-109 to 33-123
Insane, examination and commitment.....	38-201 to 38-214
Same, voluntary	38-401 to 38-412
Eugenical sterilization law	38-606
Inebriates, commitment	38-701 to 37-711
State training school, commitment to.....	38-801 to 38-819
Senile aged, commitment	38-1101 to 38-1112
Insurance Code effective January 1, 1961:	
Appeals from commissioner of insurance.....	40-2725

Service of process	40-2818, 40-2819
Unauthorized insurers—service of process, defense of actions, attorneys' fees	40-3403 to 40-3408
Surplus lines, service of process.....	40-3423, 40-3424
Prohibited or undefined trade practices—injunction proceed- ings, and appeals from commissioner's report.....	40-3514, 40-3515
Appeals from decisions of commissioner of insurance respecting rates and rating organizations	40-3633
Delinquency proceedings against insurance companies.....	40-5101 to 40-5133
Fraternal benefit societies, service of process.....	40-5352
Fraternal benefit societies, injunction and quo warranto pro- ceedings	40-5356, 40-5357
Grazing district appeal procedure.....	46-2308
State mine inspector, procedure for investigation of charges of neglect of duty	50-410
Review of order of Montana trade commission.....	51-113
Appeal from decision of highway patrol supervisor.....	53-419
Review of orders of oil and gas conservation commission.....	60-135
Uniform Adoption Act	61-201 to 61-217
Appeal from decision of board of medical examiners.....	66-1004
Review of order of board of pharmacy.....	66-1509
Commitment to state tuberculosis hospital.....	69-307 to 69-310 and 69-313
Establishing birth	69-522
Review of decision of board of health or water pollution council.....	69-1335
Review of actions of public service commission.....	70-128
Review of action of board of railroad commissioners.....	72-125
Review of school trustees' resolution to sell school property.....	75-1634
Compulsory attendance at school.....	75-2901
State industrial school, commitment.....	75-3001, 75-3002
State industrial school	80-810 and 80-815 to 80-817
State vocational school, commitment	80-918 to 80-921
Female reformatories, commitment	80-1002, 80-1003
Proceedings to abate fire hazards.....	82-1219 to 82-1222
Appeal from decision of commissioner of agriculture.....	84-3410 to 84-3412
Action to confirm tax deed.....	84-4144 to 84-4150
Action to quiet title to tax deed property.....	84-4158
Action to procure tax deed.....	84-4162 to 84-4169
Complaint in action to collect taxes by suit.....	84-4302
Cigarette tax appeal	84-5617
Administration of trusts	86-315 to 86-326
Review of order of unemployment compensation commission.....	87-108
Insecure dams	89-702 to 89-714
Creation of irrigation districts	89-1201 to 89-1204
Irrigation districts—changing boundaries, correcting errors, fixing taxable acreage, etc.	Title 89, Ch. 14
Confirmation of resolution authorizing bonds for irrigation district.....	89-1704
Dissolution of irrigation districts.....	89-2001 to 89-2008
Irrigation districts, appeals	89-2101, 89-2102
Drainage districts, creation	Title 89, Ch. 22

Drainage districts, commissioners	Title 89, Ch. 23
Proceedings to alter or add to drainage district.....	Title 89, Ch. 27
Miscellaneous provisions respecting drainage districts.....	Title 89, Ch. 28
Escheated estate proceedings	91-515 to 91-518
Procedure to obtain authority to mortgage, lease, or sell part of estate	Title 91, Ch. 31
Determination of heirship.....	91-3801 to 91-3803
Termination of life estate or joint tenancy.....	91-4321
Appointment of guardians of minors.....	91-4601
Appointment of guardians of insane and incompetent persons	91-4701, 91-4702
Restoration to capacity.....	91-4704
Uniform Veterans' Guardianship Act	Title 91, Ch. 48
Procedure to mortgage or lease by guardians.....	91-4911
Property sale by guardians.....	91-5005 to 91-5013
Guardians of nonresidents	Title 91, Ch. 51
Examination and removal of guardians, etc.....	91-5201, 91-5202
Proceedings supplementary to execution.....	93-5901 to 93-5913
Actions to establish title to property granted to heirs of deceased's entrymen	93-6225 to 93-6239
Partition of property	93-6301 to 93-6360
Certiorari	93-9001 to 93-9011
Mandamus	93-9101 to 93-9114
Prohibition	93-9201 to 93-9204
Provisions applicable to certiorari, mandamus, and prohibition	93-9301 to 93-9303
Eminent domain	93-9901 to 93-9926
Change of name	93-100-1 to 93-100-9
Judicial determination of birth	93-101-1 to 93-101-6
Arbitration	93-201-1 to 93-201-10
Bastardy proceedings	94-9901 to 94-9908
Habeas corpus	94-101-1 to 94-101-33
Uniform Reciprocal Enforcement of Support Act.....	94-901-1 to 94-901-18

History: En. Sec. 81, Ch. 13, L. 1961;
amd. Sec. 1, Ch. 190, L. 1963.

Amendment

The 1963 amendment substituted the line concerning sections 93-6225 to 93-6239 for a line reading, "Quiet title (including actions to establish property granted to heirs of deceased entrymen).....93-6201 to 93-6239."

Rules Superseding Statutes

Section 3, Ch. 14, Laws 1963, deleted from Table B the entry which showed Rule 25 superseding section 93-2824, retroactive to January 1, 1962.

Section 2, Ch. 190, Laws 1963, added to Table B entries showing Rule 4 superseding sections 53-204, 93-3004, 93-3009, 93-3010, 93-3019, 93-6206, 93-6207, and 93-6208.

Statutes Superseded by Rules

Section 4, Ch. 14, Laws 1963, deleted from Table C the entry which showed section 93-2824 superseded by Rule 25, retroactive to January 1, 1962.

Section 3, Ch. 190, Laws 1963, added to Table C entries showing sections 53-204, 93-3004, 93-3009, 93-3010, 93-3019, 93-6206, 93-6207, and 93-6208 all superseded by Rule 4.

CHAPTER 2801—RULES OF PRACTICE ADOPTED BY SUPREME COURT

- Section 93-2801-1. Power of supreme court over rules in civil actions—scope of rules.
 93-2801-2. Advisory committee on rules.
 93-2801-3. Distribution of proposed rules to bench and bar—petitions of professional associations.
 93-2801-4. Local rules of practice.
 93-2801-5. Administrative practice rules unaffected.
 93-2801-6. Continuation of existing laws and rules.
 93-2801-7. Effective date of rules.
 93-2801-8. Legislative power reserved.

93-2801-1. Power of supreme court over rules in civil actions—scope of rules. The supreme court of this state shall have the power to regulate the pleading, practice, procedure, and the forms thereof in civil actions in all courts of this state, by rules promulgated by it from time to time, for the purpose of simplifying judicial proceedings in the courts of Montana and for promoting the speedy determination of litigation upon its merits. Such rules shall not abridge, enlarge, or modify the substantive rights of any litigant and shall not be inconsistent with the constitution of the state of Montana.

History: En. Sec. 1, Ch. 16, L. 1963.

Title of Act

An act authorizing and empowering the supreme court of the state of Montana to regulate by rules, the pleading, practice

and procedure in civil cases in the courts of the state of Montana, for the purpose of simplifying judicial proceedings and promoting the speedy determination of litigation upon its merits.

93-2801-2. Advisory committee on rules. Before any rules are adopted the supreme court shall appoint an advisory committee consisting of eight members of the bar of the state and at least three judges of the district court to assist the court in considering and preparing such rules as it may adopt.

History: En. Sec. 2, Ch. 16, L. 1963.

93-2801-3. Distribution of proposed rules to bench and bar—petitions of professional associations. Before any rule is adopted, the supreme court shall distribute copies of the proposed rule to the bench and bar of the state for their consideration and suggestions and give due consideration to such suggestions as they may submit to the court. The Montana Bar Association or the Association of Montana Judges may file with the supreme court a petition specifying their suggestions concerning any existing or proposed rule and requesting a hearing thereon within six (6) months after the filing of the petition.

History: En. Sec. 3, Ch. 16, L. 1963.

93-2801-4. Local rules of practice. Any district court and the supreme court, may adopt rules of court governing its practice so long as such rules are not in conflict with the rules promulgated by the supreme court of the state of Montana, in accordance with this act.

History: En. Sec. 4, Ch. 16, L. 1963.

93-2801-5. Administrative practice rules unaffected. This act shall not affect the power of any constitutional or statutory commission or board to make rules governing its practice.

History: En. Sec. 5, Ch. 16, L. 1963.

93-2801-6. Continuation of existing laws and rules. All present laws and rules relating to pleading, practice and procedure, shall be effective as rules of court until modified or superseded by subsequent court rule, and upon the adoption of any rule pursuant to this act such laws and rules, in so far as they are in conflict therewith, shall thereafter be of no further force and effect.

History: En. Sec. 6, Ch. 16, L. 1963.

93-2801-7. Effective date of rules. All rules promulgated under this act shall be effective at a time fixed by the supreme court.

History: En. Sec. 7, Ch. 16, L. 1963.

93-2801-8. Legislative power reserved. This act shall not abridge the right of the legislature to enact, modify, or repeal any statute or modify or repeal any rule of the supreme court adopted pursuant thereto.

History: En. Sec. 8, Ch. 16, L. 1963.

CHAPTER 2901—SUPPORT OF CHILDREN BORN OUT OF WEDLOCK

Section 93-2901-1.	Obligations of the father.
93-2901-2.	Enforcement.
93-2901-3.	Limitation on recovery from the father.
93-2901-4.	Limitations on recovery from father's estate.
93-2901-5.	Remedies.
93-2901-6.	Time of trial.
93-2901-7.	Judgment.
93-2901-8.	Security.
93-2901-9.	Venue.
93-2901-10.	Uniformity of interpretation.
93-2901-11.	Operation and repeal.

93-2901-1. Obligations of the father. The father of a child which is or may be born out of wedlock is liable to the same extent as the father of a child born in wedlock, whether or not the child is born alive, for the reasonable expense of the mother's pregnancy and confinement and for the education, necessary support and funeral expenses of a child. A child born out of wedlock includes a child born to a married woman by a man other than her husband; provided, however, nothing herein contained shall affect the presumptions of legitimacy otherwise provided by statute.

History: En. Sec. 1, Ch. 233, L. 1963.

Title of Act

An act imposing upon the father of an

illegitimate child a duty of support; establishing a civil action for the determination of parentage of an illegitimate child.

93-2901-2. Enforcement. Paternity may be determined upon the complaint of the mother, child, or the public authority chargeable by law with the support of the child. If paternity has been determined, the liabilities of the father may be enforced in the same or other proceedings (1) by the mother, child, or the public authority which has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, necessary support, or funeral expenses, and (2) by other persons including private agencies to the extent that they have furnished the reasonable

expenses of pregnancy, confinement, education, necessary support, or funeral expenses.

History: En. Sec. 2, Ch. 233, L. 1963.

93-2901-3. Limitation on recovery from the father. The father's liabilities for past education and necessary support are limited to a period of four years next preceding the commencement of a proceeding.

History: En. Sec. 3, Ch. 233, L. 1963.

93-2901-4. Limitations on recovery from father's estate. The obligation of the estate of the father for liabilities under this act is limited to amounts accrued prior to his death.

History: En. Sec. 4, Ch. 233, L. 1963.

93-2901-5. Remedies. The district court has jurisdiction of a proceeding under this act and all remedies for the enforcement of judgments for expenses of pregnancy and confinement for a wife or for education, necessary support, or funeral expenses for legitimate children apply. The court has continuing jurisdiction to modify or revoke a judgment for future education and necessary support. All remedies under the Uniform Reciprocal Enforcement of Support Act are available for enforcement of duties of support under this act.

History: En. Sec. 5, Ch. 233, L. 1963.

93-2901-6. Time of trial. If the issue of paternity is raised in a proceeding commenced during the pregnancy of the mother, the trial shall not, without the consent of the alleged father, be held until after the birth or miscarriage but during such delay testimony may be perpetuated according to the laws of this state.

History: En. Sec. 6, Ch. 233, L. 1963.

93-2901-7. Judgment. Judgments under this act may be for periodic payments which may vary in amount. The court may order payments to be made to the mother or to some person, corporation, or agency designated to administer them under the supervision of the court.

History: En. Sec. 7, Ch. 233, L. 1963.

93-2901-8. Security. The court may require the alleged father to give bond or other security for the payment of the judgment.

History: En. Sec. 8, Ch. 233, L. 1963.

93-2901-9. Venue. A proceeding under this act may be brought in the county where the alleged father is present or has property or in the county where the mother resides.

History: En. Sec. 9, Ch. 233, L. 1963.

93-2901-10. Uniformity of interpretation. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 10, Ch. 233, L. 1963.

93-2901-11. Operation and repeal. This act applies to all cases of birth out of wedlock as defined in this act where birth occurs after this act takes effect.

History: En. Sec. 11, Ch. 233, L. 1963.

REVISED CODES OF MONTANA

VOLUME 8 1963 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF THE
1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING THE PARENT VOLUME
THROUGH VOLUME 377, PACIFIC
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CHAPTER 1—DEFINITIONS AND PRELIMINARY PROVISIONS

94-102. (10711) Provisions similar to existing laws, how construed.

Amendment Increasing Punishment

Where the effect of the amendment of a statute is only to increase the prescribed

punishment, the unchanged portion of the statute remains in effect. State v. Cline, 135 M 372, 339 P 2d 657.

94-105. (10714) What intent to defraud is sufficient.

References

Cited in State v. Harmon, 135 M 227, 340 P 2d 128.

94-107. (10716) Proceedings to impeach or remove officers, etc.**References**

Cited in State ex rel. Bonner v. District Court, 122 M 464, 206 P 2d 166, 171.

94-114. (10723) Felony and misdemeanor defined.**References**

Cited or applied in State ex rel. Borberg

v. District Court, 125 M 481, 240 P 2d 854, 856.

94-116. (10725) Punishment of misdemeanor, etc.**References**

Cited or applied in State ex rel. Borberg

v. District Court, 125 M 481, 240 P 2d 854, 856.

94-117. (10726) To constitute crime there must be unity of act, etc.**Criminal Negligence**

Insofar as the offense of involuntary manslaughter is concerned under section 94-2507, the proof of culpability is supplied by evidence of criminal negligence. State v. Strobel, 130 M 442, 304 P 2d 606, 617, overruled on another point, 333 P 2d 1021.

It is wholly unnecessary in involuntary manslaughter cases to superimpose upon the requirement of the element of criminal negligence the further requirement that a determination must be made as to whether the act resulting in death might ordinarily be classified as malum in se or merely malum prohibitum, for, if that act is done in a manner which is criminally negligent, it thereby becomes malum in se and thereby includes the element of mens rea. State

v. Strobel, 130 M 442, 304 P 2d 606, 617, overruled on another point, 333 P 2d 1021.

Under a prosecution for involuntary manslaughter, irrespective of the character of the unlawful act, whether malum in se or merely malum prohibitum, the criminality of the act resulting in death is established if that act was done negligently in such a manner as to evince a disregard for human life or an indifference to consequences. State v. Strobel, 130 M 442, 304 P 2d 606, 617, overruled on another point, 333 P 2d 1021.

Involuntary Manslaughter

Wilful or evil intent is not an element of involuntary manslaughter. State v. Pankow, 134 M 519, 333 P 2d 1017, 1021.

94-119. (10728) Drunkenness no excuse for crime, etc.**References**

Cited or applied in State v. Quinlan, 126 M 52, 244 P 2d 1058, 1062 (dissent-

ing opinion); State v. Zumwalt, 129 M 529, 291 P 2d 257, 261.

CHAPTER 2—PERSONS LIABLE TO PUNISHMENT— PARTIES TO CRIME

94-201. (10729) Who are capable of committing crimes.**Instructions**

Refusal to give instruction under subd. 6 of this section was not reversible error in view of other instructions given. State v. Allison, 122 M 120, 199 P 2d 279, 289.

References

Cited or applied in State v. Quinlan, 126 M 52, 244 P 2d 1058, 1062 (dissenting opinion); State v. Smith, 126 M 124, 246 P 2d 227, 228.

94-204. (10732) Who are principals.**"Accomplice" Defined**

An accomplice is one who knowingly, voluntarily, and with common intent with the principal offender unites in the commission of a crime. State v. Harmon, 135 M 227, 340 P 2d 128.

Aiding and Abetting

While the statute defines larceny as the taking of property from the person of another yet it is sufficient to show the de-

fendant's guilt that he aided or abetted in the commission of the crime. State v. Maciel, 130 M 569, 305 P 2d 335, 336.

Conspiracy

A coconspirator may be found guilty of a crime committed by his fellow conspirator whether the fellow conspirator is alive or dead, competent or incompetent, at the time of his trial. State v. Alton, 139 M 479, 365 P 2d 527, 535.

All participants in a conspiracy may be found guilty of any of the degrees of murder or one or more may be found guilty of each degree. *State v. Alton*, 139 M 479, 365 P 2d 527, 538.

All parties to a conspiracy are guilty whether their part in the conspiracy is large or small, and whether or not that part is to be carried out at a distance from the other conspirators. *State v. Alton*, 139 M 479, 365 P 2d 527, 538.

Felony Murder Rule

Where defendant hired two men to set fire and burn his service station, and during the course of the arson the two men were burned and subsequently died, the defendant was guilty of first degree murder under the felony murder rule since any death directly attributable to a plot to commit arson makes all the conspirators in the arson plot equally guilty of first degree murder. *State v. Morran*, 131 M 17, 306 P 2d 679.

Injury to Perpetrator of Crime

A bartender who worked after hours for the sole purpose of making illegal sales of liquor and signaling prostitutes as to the arrival of prospective customers was in pari delicto and could not recover from his employer for an injury received during such employment. *Lencioni v. Long*, 139 M 135, 361 P 2d 455.

Instructions

Where a verbal declaration of one co-defendant that he and the other codefend-

ant were partners was given in evidence, it was error for the court to refuse defendant's instruction that such verbal declaration is insufficient to establish a partnership. Although a partnership was immaterial because of this section and section 94-6423, yet the jury may have given full consideration to the declaration and found defendant guilty on the strength thereof. *State v. Keller*, 126 M 142, 246 P 2d 817, 821.

Kidnaping

Defendant was guilty of confining prison guard secretly against his will in violation of section 94-2602 where the evidence showed that defendant, an inmate of the state prison, walked behind prison guard with a knife, after another inmate had disarmed the guard, until the inmates had placed the guard in isolation. *State v. Frodsham*, 139 M 222, 362 P 2d 413, 419.

Operation and Effect

Under this section and section 94-6423, evidence was sufficient to sustain a conviction of assault in the second degree where defendant was at the scene of the crime and was admittedly a participant therein; it is not necessary to show that he actually fired any one of the guns. *State v. Simon*, 126 M 218, 247 P 2d 481, 484.

References

Cited or applied in *State v. Phillips*, 127 M 381, 264 P 2d 1009, 1015.

CHAPTER 3—ABANDONMENT AND NEGLECT OF WIFE AND CHILDREN

Section 94-301. Abandonment or failure to support wife—penalty for.

94-304. Desertion or abandonment of child or ward a felony—suspension of sentence, when.

94-301. (11017) Abandonment or failure to support wife—penalty for. Every person, having sufficient ability to provide for his wife's support, or who is able to earn the means for such wife's support, who wilfully abandons and leaves his wife in a destitute condition, or who refuses or neglects to provide such wife with necessary food, clothing, shelter or medical attendance, unless in the judgment of the court or jury he is justified in abandoning her by her misconduct, shall be guilty of a misdemeanor.

History: En. Sec. 470, Pen. C. 1895; re-en. Sec. 8345, Rev. C. 1907; amd. Sec. 1, Ch. 77, L. 1917; re-en. Sec. 11017, R. C. M. 1921; amd. Sec. 1, Ch. 179, L. 1963. Cal. Pen. C. Sec. 270.

Amendment

The 1963 amendment deleted language which appeared near the beginning of the section and read, "who: 1. Having any child under the age of sixteen years, de-

pendent upon him or her for care, education or support, wilfully omits, without lawful excuse, to furnish necessary food, clothing, shelter or medical attention for his or her child or children, or ward or wards; or"; and made minor changes in style and arrangement.

References

Cited or applied in *State v. McBane*, 128 M 369, 275 P 2d 218, 221.

94-302. (11018) Orders which may be entered by the court.**Cross-Reference**

Enforcement of support orders of other states, secs. 93-2601-1 to 93-2601-40.

References

Cited or applied in *State v. McBane*, 128 M 369, 275 P 2d 218, 219, 221.

94-304. (11020) Desertion or abandonment of child or ward a felony—suspension of sentence, when. Any person who has a child or ward under the age of sixteen (16) years who is dependent upon him or her for care or support shall not:

(1) Desert or abandon such child or ward without providing necessary and proper shelter, food, clothing and medical care for such child or ward; or

(2) Wilfully omit, without lawful excuse, to provide necessary and proper shelter, food, clothing and medical care for such child or ward.

A person who violates this section is guilty of a felony and shall, upon conviction, be punished by imprisonment for not less than one (1) year nor more than five (5) years in the state prison. The court may suspend such sentence if the defendant shall furnish a bond in such penal sum, and with such surety or sureties as the court may fix, conditioned that he will furnish his child or ward with necessary and proper shelter, food, care, and clothing. In case of failure to comply with the conditions of such bond, the court may order such person to appear before the court and show cause why sentence should not be imposed, whereupon the court may pass sentence or may modify the order and take a new bond and further suspend sentence as may be just and proper. The judge may declare a bond forfeited and may, in his discretion, order the face amount of such bond used to support the persons deserted, abandoned or neglected.

History: En. Sec. 471, Pen. C. 1895; amd. Sec. 1, Ch. 6, L. 1905; re-en. Sec. 8346, Rev. C. 1907; amd. Sec. 1, Ch. 68, L. 1917; re-en. Sec. 11020, R. C. M. 1921; amd. Sec. 2, Ch. 179, L. 1963. Cal. Pen. C. Sec. 270b.

him this section making it a felony to desert and abandon children under 15 years of age, and also sections 94-301 and 94-302 which make it a misdemeanor to omit without lawful excuse to furnish necessary board, clothing, shelter or medical attention to children under the age of 16 years, the court abused its discretion in refusing to grant the defendant's motion to change his plea of guilty since there was a misunderstanding as to what the defendant pleaded guilty. *State v. McBane*, 128 M 369, 275 P 2d 218. (Dissenting opinion, 128 M 369, 275 P 2d 218, 222.)

Amendment

The 1963 amendment substantially re-wrote this section. For previous text, see parent volume.

Change of Plea of Guilty

Where defendant was charged with desertion of minor children and upon arraignment the defendant indicated that he wanted to plead guilty and court read

94-306. (11022) Cruelty to children.

Failure to provide medical attention for child as criminal negligence. 12 ALR 2d 1047.

CHAPTER 4—ABORTION**94-401. (11023) Administering drugs, etc., with intent to, etc.**

Admissibility of evidence of commission of similar crimes in prosecution based on abortion. 15 ALR 2d 1080.

Necessity, to warrant conviction of abortion, that fetus be living at time of commission of acts. 16 ALR 2d 949.

CHAPTER 6—ASSAULTS

Section 94-602. Assault in second degree.

94-601. (10976) Assault in the first degree defined—penalty.

Criminal Intent

The element of felonious intent in every contested criminal case must necessarily be determined from the facts and circumstances of the particular case, this for the reason that criminal intent, being a state of mind, is rarely susceptible of direct or positive proof and therefore must usually be inferred from the facts testified to by witnesses and the circumstances as developed by the evidence. *State v. Madden*, 128 M 408, 276 P 2d 974, 978.

Operation and Effect

In a prosecution for assault in the first or second degree the prosecution had to prove by satisfactory evidence, that when the defendant pointed a gun at a person he intended to commit a felony upon that person; instructions defining the felony must be given to the jury so that the jury can determine if the evidence showed such intended felony. *State v. Quinlan*, 126 M 52, 244 P 2d 1058, 1059 (the court was not in agreement on this however, see the dissenting opinions of two judges on pages 1060, 1063).

Penalty

Defendant charged with assault in first degree was properly sentenced to state prison for 18 years which was within the statutory term for the offense of which the jury found him guilty and during trial on first day of assault charge he pleaded guilty to three prior felony convictions charged in same information charging assault in first degree. *State v. McLeod*, 131 M 478, 311 P 2d 400, 408.

Sufficiency of Information

Trial court did not err in overruling defendant's demurrer to amended information and in overruling his objection to the introduction of evidence and his motion to dismiss the information, where the amended information complied with the requirements of sections 94-6401, 94-6403 to 94-6405 and 94-6412. *State v. McLeod*, 131 M 478, 311 P 2d 400, 406.

References

Cited or applied in *State v. Smith*, 126 M 124, 246 P 2d 227, 228.

Indecent proposal to woman as criminal assault. 12 ALR 2d 971.

94-602. (10977) Assault in second degree. Every person who, under circumstances not amounting to the offense specified in the last section:

(1) With intent to injure unlawfully, administers to, or causes to be administered to, or taken by another, poison, or any other destructive or noxious thing, or any drug or medicine, the use of which is dangerous to life or health; or,

(2) With intent thereby to enable or assist himself, or any other person, to commit any crime, administers to, or causes to be administered to, or taken, by another, chloroform, ether, laudanum, or any other intoxicating narcotic, or anesthetic agent; or,

(3) Wilfully or wrongfully wounds or inflicts grievous bodily harm upon another, either with or without a weapon; or,

(4) Wilfully and wrongfully assaults another by the use of a weapon, or other instrument or thing likely to produce grievous bodily harm; or,

(5) Assaults another with intent to commit a felony, or to prevent or resist the execution of any lawful process or mandate of any court or officer, or the lawful apprehension or detention of himself, or of any other person,

is guilty of an assault in the second degree, and is punishable by imprisonment in the state prison for not less than one nor more than six years, or by a fine not exceeding two thousand dollars, or both.

History: En. Sec. 401, Pen. C. 1895; re-en. Sec. 8313, Rev. C. 1907; re-en. Sec. 10977, R. C. M. 1921; amd. Sec. 1, Ch. 129, L. 1961. Cal. Pen. C. Secs. 216, 222, and 245.

Amendment

The 1961 amendment increased the maximum term of imprisonment from five to six years.

Instructions on This Section

Instructions defining the felony intended to be committed must be given to the jury in a prosecution of assault in the first or second degree so that the jury may determine if the evidence showed an intended felony. *State v. Quinlan*, 126 M 52, 244 P 2d 1058, 1059.

Subd. 4

Operation and Effect

Evidence was insufficient to justify a conviction of second degree assault with a deadly weapon where it was disclosed that the defendant was hunting jack rabbits at the time; that he never knew the prosecuting witness prior to the day of the alleged assault; that the rifle was extremely sensitive and would fire upon being brushed against an object such as clothing or even a change in temperature might fire the gun; and that the defendant was an instructor in firearms in the army during the war and would not have missed from the distance of eight feet had he been aiming at the prosecuting witness. *State v. Smith*, 126 M 124, 246 P 2d 227, 228.

Evidence was sufficient to justify a conviction under this section when it was shown that defendant was with a group of boys who fired a barrage of shots at a house and some of the pellets hit the house; the fact that the prosecuting witness had moved to a position away from the line of fire did not prevent the attack from being an assault upon him and sustained the charge that the guns were fired toward him and in his direction. *State v. Simon*, 126 M 218, 247 P 2d 481, 482, 483, 484.

Proof of Offense Different Than That Charged

Where defendant was charged with assault in the second degree as defined in subd. 4, it was error to introduce evidence that the defendant in pointing the firearm was resisting a lawful arrest by the sheriff in violation of subd. 5. *State v. Storm*, 124 M 102, 220 P 2d 674, 675.

Specific Intent

Specific intent needs to be proved in second degree assault charges only under subdivisions 1, 2 and 5 of this section. *State v. Straight*, 136 M 255, 347 P 2d 482, 487.

Sufficiency of Evidence

Where evidence did not show that defendant pointed gun at sheriff after he was handed paper by deputy which purported to be a warrant, evidence was insufficient to support a conviction under either subd. 4 or 5 of this section. *State v. Storm*, 124 M 102, 220 P 2d 674, 678.

Sufficiency of Information

Information charging defendant with unlawfully threatening another by pointing a loaded revolver at him charged a criminal offense. *State v. Storm*, 124 M 102, 220 P 2d 674, 675.

An information charging that the defendant committed the crime of assault in the second degree by wilfully, wrongfully, unlawfully, and feloniously assaulting a human being by wounding and inflicting grievous bodily harm contrary to the form, force and effect of the statute, was sufficient to let the defendant know specifically the crime with which he was charged. *State v. Straight*, 136 M 255, 347 P 2d 482, 486.

Even though, in an information charging second degree assault, it was not charged specifically that a belt was used in the assault, admission of evidence that a belt was used was not error. *State v. Straight*, 136 M 255, 347 P 2d 482, 487.

References

Cited or applied in *State ex rel. Neilson v. District Court*, 128 M 445, 277 P 2d 536, 539.

94-603. (10978) Assault in third degree.

Instructions

It was error to refuse defendant's instructions defining assault in the third degree, and instead instructing the jury as to assault in the first and second degree but omitting any instructions defining what felony was intended to be committed by assaulting a person with a

gun. Since the jury had no way of knowing what felony, if any, the defendant intended to commit upon a person by pointing a gun at him, the jury should have been allowed to consider whether or not defendant was guilty of third degree assault. *State v. Quinlan*, 126 M 52, 244 P 2d 1058, 1059.

94-605. (10980) Use of force not unlawful.**Subd. 3****Operation and Effect**

Evidence failed to justify a conviction of assault with a deadly weapon when it was shown that the defendant was merely exercising force in defense of his home, inasmuch as the prosecuting witness came to defendant's cabin in the company of another fellow who had intruded in defendant's home and lived there without defendant's permission and who the defendant had to forcibly evict, and also someone had been stealing log poles from the defendant. *State v. Nickerson*, 126 M 157, 247 P 2d 188, 192, 193.

Subd. 4**Intent**

Under this section, in order to convict one standing in loco parentis of assault upon a child, it is not necessary to prove either express or implied malice or permanent injury. It is up to the jury to determine from the facts and circumstances of each individual case whether the manner of punishment is reasonable and the degree moderate. *State v. Straight*, 136 M 255, 347 P 2d 482, 490.

CHAPTER 7—BIGAMY AND INCEST**94-705. (11029) Incest.****Amendment of Information**

There was no substantial change in the charge where the court allowed the state to amend an information charging defendant with incest by changing "fornication" to "adultery." Whether the defendant was

married and unmarried at the time is not a material ingredient of the offense. In either event the defendant is guilty, if the intercourse charged is proved. *State v. Kuntz*, 130 M 126, 295 P 2d 707, 710.

CHAPTER 8—BRIBERY AND CORRUPTION**94-804. (10856) Improper attempts to influence jurors, referees, etc.****Operation and Effect**

Where the evidence discloses that the defendant conversed with a grand juror privately at the latter's home it cannot

be construed to be in the regular course of proceedings and thus within the exception to this section. *State v. Porter*, 125 M 503, 242 P 2d 984, 990.

94-806. (10858) Embracery.**Operation and Effect**

After a person has been discharged as a grand juror, the crime of embracery could not be committed even though the de-

fendant thought he was influencing a grand juror. *State v. Porter*, 125 M 503, 242 P 2d 984, 987.

CHAPTER 9—BURGLARY AND HOUSEBREAKING—POSSESSION OF BURGLARIOUS INSTRUMENTS AND DEADLY WEAPONS

Section 94-901. Burglary defined.

94-904. Word "enter" defined.

94-901. (11346) Burglary defined. Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, out-house, or other building, tent, motor vehicle and aircraft, vessel, or railroad car, with intent to commit grand or petit larceny or any felony, is guilty of burglary.

History: Ap. p. Sec. 58, p. 188, Bannack Stat.; re-en. Sec. 69, p. 281, Cod. Stat. 1871; re-en. Sec. 69, 4th Div. Rev. Stat. 1879; amd. Sec. 1, p. 50, L. 1885; re-en. Sec. 73, 4th Div. Comp. Stat. 1887; amd.

Sec. 820, Pen. C. 1895; re-en. Sec. 8620, Rev. C. 1907; re-en. Sec. 11346, R. C. M. 1921; amd. Sec. 1, Ch. 126, L. 1949; amd. Sec. 1, Ch. 17, L. 1957. Cal. Pen. C. Sec. 459.

Amendments

The 1949 amendment inserted the word "automobile" and the word "or" before "railroad car."

The 1957 amendment substituted the words "motor vehicle and aircraft" for the word "automobile."

Effective Date

Section 2 of Ch. 17, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 18, 1957.

Aiding Another in Entry

To support a conviction of two persons for burglary, it is not essential that the entry shall be by both, but if one of them entered and was aided by the other in so doing both are guilty, since burglary may be committed by being present and aiding another in entering. *State v. Harmon*, 135 M 227, 340 P 2d 128.

Burglary Tools as Evidence

Burglary tools may be introduced and received into evidence only after proof is made connecting the tools with the accused or the crime and, where it does not appear from the evidence that the tools were ever in the possession or under the control of the defendant or that they were in any way connected with the alleged crime, their admission as evidence is error. *State v. Filacchione*, 136 M 238, 347 P 2d 1000.

94-902. (11347) Degrees of burglary.**Failure to Prove Time Crime Was Committed**

Where the information alleges nighttime or first degree burglary it is essential that the state prove the crime occurred during the nighttime as provided in section 94-905. When the evidence is that

Proof of Intent—Circumstantial Evidence

An express intention to commit a felony or larceny does not have to be proved, but it may be manifested by circumstances connected with perpetration of the offense without any positive testimony as to express intent. *State v. Board*, 135 M 139, 337 P 2d 924.

Truck

The legislature has made it clear that an automobile and truck are to be considered two distinct and separate vehicles for registration and tax purposes. It does not make sense to hold that the legislature intended, in making entry into an automobile burglary, to have intended the word "automobile" as a general term, and to include automobiles, trucks, busses and the like. Had the legislature intended to use a general term, it would have used the term "motor vehicle." Certainly no interpretation should be given any word which would make an act a crime unless it is clear that the legislature intended that interpretation should be given such word. *State v. Duran*, 127 M 233, 259 P 2d 1051, 1052. (See, however, the dissenting opinion, 127 M 233, 259 P 2d 1051, 1054.)

References

Cited in *State v. Allison*, 122 M 120, 199 P 2d 279, 299; *State v. Fitzpatrick*, 125 M 448, 239 P 2d 529.

the crime took place sometime between 3:15 a.m. and 8:00 a.m. and that on the particular day the sun rose at 5:56 a.m. a conviction of nighttime burglary cannot stand. *State v. Fitzpatrick*, 125 M 448, 239 P 2d 529, distinguished in 337 P 2d 927.

94-903. (11348) Penalty.**References**

Cited in *State ex rel. Nelson v. Ellsworth*, — M —, 375 P 2d 316, 318.

94-904. (11349) Word "enter" defined. The word "enter," as used in this chapter, includes the entrance of the offender into such house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, automobile, vessel, or railroad car, or the insertion therein of any part of his body, or of any instrument or weapon held in his hand, or used or intended to be used, to threaten or intimidate the inmates, or to detach or remove the property.

History: En. Sec. 823, Pen. C. 1895; re-en. Sec. 8623, Rev. C. 1907; re-en. Sec. 11349, R. C. M. 1921; amd. Sec. 2, Ch. 126, L. 1949.

Amendment

The 1949 amendment inserted the words "store, mill, barn" and the word "automobile."

Repealing Clause

Section 3 of Ch. 126, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 126, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved March 1, 1949.

94-905. (11350) Nighttime defined.**Operation and Effect**

When an information charges nighttime or first degree burglary, proof that the crime occurred in the period between sunset and sunrise is essential in order to convict the defendant. *State v. Fitz-*

patrick, 125 M 448, 239 P 2d 529, distinguished in 337 P 2d 927.

References

Cited in *State v. Board*, 135 M 139, 337 P 2d 924, 927.

94-909. (11354) Carrying deadly weapon with intent to assault, etc.**References**

Cited or applied in *State ex rel. Keast*

v. District Court, 136 M 367, 348 P 2d 135, 138.

**CHAPTER 10—COMMON NUISANCES—MAINTENANCE IN CONNECTION
WITH SELLING INTOXICATING LIQUORS—OPIUM—
PROSTITUTION AND GAMBLING**

Section 94-1002. Certain buildings declared nuisances.

94-1001. (11123) Definition of "person" and "building."**Operation and Effect**

Actions for the prosecution of gambling laws may be prosecuted under either of these sections or under sections 94-2401 and 94-2404, or under each and all of such sections. *State ex rel. Replogle v. Joyland Club*, 124 M 122, 220 P 2d 988, 1000. Fact that county attorney proceeded

under this law for abatement of gambling nuisance, rather than under sections 94-2401 and 94-2404 for criminal punishment, is not a matter of which the defendant can complain on appeal. *State ex rel. Replogle v. Joyland Club*, 124 M 122, 220 P 2d 988, 1000.

94-1002. (11124) Certain buildings declared nuisances. Every building or place or tract of land under one ownership used for the purpose of lewdness, assignation, or prostitution, and every building or place or tract of land under one ownership wherein or upon which acts of lewdness, assignation, or prostitution are held or occur, and any building, place or tract of land under one ownership wherein or upon which gambling or those other illegal acts prohibited by chapter 24 and chapter 30, Title 94 Revised Codes of Montana, 1947, are carried on or occurs, contrary to any of the laws of the state of Montana, or wherein any wine rooms are conducted or maintained, contrary to the laws of the state of Montana, or wherein any opium or coca leaves, their salts, derivatives, and preparations thereof are sold or given away or used contrary to the laws of the state of Montana, is a nuisance which shall be enjoined, abated, and prevented as hereinafter provided, whether the same be a public or private nuisance.

History: En. Sec. 2, Ch. 95, L. 1917; amd. Sec. 1, Ch. 76, L. 1921; re-en. Sec. 11124, R. C. M. 1921; amd. Sec. 1, Ch. 268, L. 1959.

Amendment

The 1959 amendment inserted the words "or tract of land under one ownership" the first two times it appears and substituted the words "place or tract of land

under one ownership wherein or upon which gambling or those other illegal acts prohibited by chapter 24 and chapter 30, Title 94 Revised Codes of Montana, 1947, are" for the words "wherein gambling is."

Repealing Clause

Section 2 of Ch. 268, Laws 1959 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 268, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 16, 1959.

Cross-Reference

See note to sec. 94-1004. State ex rel. Olsen v. 30 Club, 124 M 91, 219 P 2d 307; State ex rel. Bergland v. Bradley, 124 M 434, 225 P 2d 1024.

Permanent Injunction during Hearing

A permanent injunction against the use of defendant's premises as a house of prostitution and an order of abatement cannot be granted pursuant to this section while a motion to strike is pending and before issues have been finally joined. State ex

rel. Harrison v. Baker, 135 M 180, 340 P 2d 142.

Punch Boards

Premises wherein punch boards are operated may be abated as a nuisance inasmuch as punch boards constitute a lottery and play at lottery is gambling. Sections 84-5701, 84-5702 (since repealed) and 94-2401 which assume to authorize the use of punch boards as trade stimulators violate § 2, Art. XIX of the Montana Constitution, which prohibits the legislature from authorizing lotteries, and therefore are invalid and do not prevent the abatement of the premises as a nuisance. State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140.

94-1003. (11125) County attorney to abate nuisance, etc.**Procedural Rules Applicable**

A suit under the provisions of this section is a civil suit, and is governed by the same rules applicable in other injunction suits where no other statutory direction is given as to the manner in which the court shall proceed. State ex rel. Harrison v. Baker, 135 M 180, 340 P 2d 142.

References

Cited or applied in Chovanak v. Matthews, 120 M 520, 188 P 2d 582, 584; State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140.

94-1004. (11126) Verification of complaint—temporary injunction.**Law Applicable**

The procedure for the abatement of a nuisance per se provided by the statute is that set forth by this law and the general procedure for the issuance of an injunction in ordinary civil cases has no application. State ex rel. Bergland v. Bradley, 124 M 434, 225 P 2d 1024.

Order Quashing Injunction Appealable

Where temporary injunction enjoining defendant from conducting the business constituting a nuisance as described in the complaint was quashed same day of issuance and an order issued enjoining defendant from operating "any of the games of chance described in the complaint contrary to the laws of the State of Montana," such order was appealable. State ex rel. Olsen v. 30 Club, 124 M 91, 219 P 2d 307, 309.

Quashing Injunction Prior to Hearing

Where complaint and affidavits showed prima facie that premises constituted a nuisance per se, it was error to quash the temporary injunction issued thereunder when defendant filed affidavit under provisions of section 93-4211, but injunction should have remained in effect until a hearing was had. State ex rel. Olsen v. 30 Club, 124 M 91, 219 P 2d 307, 309.

Verified Complaint

A complaint filed by a person other than the county attorney, if verified on information and belief pursuant to section 93-3702, is sufficient for the issuance of a temporary injunction. State ex rel. Bergland v. Bradley, 124 M 434, 225 P 2d 1024.

94-1007. (11129) Order of abatement—sale of fixtures, etc.**References**

Cited or applied in State ex rel. Harrison v. Baker, 135 M 180, 340 P 2d 142, 145.

94-1009. (11131) Owner may give bond—terms of bond, etc.**Operation and Effect**

This section did not give authority to court to order the return of the property to the owners where sheriff in executing

judgment made return of no gambling equipment found notwithstanding that defendants had stipulated that gambling equipment was in their possession. State

ex rel. Olsen v. Craven Cigar Store, 124 M 310, 220 P 2d 1029, 1033.

References

Cited or applied in State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140, 142.

CHAPTER 11—CRIMINAL CONSPIRACY AND ILLEGAL PRACTICES IN RESTRAINT OF TRADE—TRUSTS—DISCRIMINATIONS—POOLING GRAIN WAREHOUSES—DESTROYING FOOD

94-1101. (10898) Criminal conspiracy defined and punishment fixed.

Liability of Coconspirator

A coconspirator may be found guilty of a crime committed by his fellow conspirator whether the fellow conspirator is alive or dead, competent or incompetent, at the time of his trial. State v. Alton, 139 M 479, 365 P 2d 527, 535.

References

Cited or applied in State v. Simon, 126 M 218, 247 P 2d 481, 485.

Bill of particulars to one accused of conspiracy to overthrow government. 5 ALR 2d 496.

94-1104. (10901) Unlawful trusts and monopolies—penalty.

Insurance Business

Since this section prohibits conspiracies in restraint of trade in the insurance business, federal district court, because of the provisions of the McCarran Act (15 U. S. C. § 1 et seq.), would have no jurisdic-

tion of a suit for violation of the Sherman and Clayton Acts involving the business of insurance, unless the suit fell within an exception to the McCarran Act. Professional & Business Men's Life Ins. Co. v. Bankers Life Co., 163 F Supp 274, 280.

CHAPTER 14—ELECTION FRAUDS AND OFFENSES—CORRUPT PRACTICES ACT

Section 94-1475. Political literature to contain name of officer of organization or person publishing and producing.

94-1476. Violation of preceding section a misdemeanor.

94-1454. (10800) Political criminal libel.

Compiler's Note

This section may be partially superseded by sec. 94-1475.

94-1475. Political literature to contain name of officer of organization or person publishing and producing. It shall be unlawful for any person to publish, print, mimeograph, type or otherwise produce any dodger, bill, handbill, pamphlet or other document which is designed to aid, injure or defeat any candidate or any political party or organization or measure before the people unless it is stated therein the name of the chairman or secretary, or the names of the other officers of the political or other organization publishing, printing, mimeographing, typing or otherwise producing such dodger, bill, handbill, pamphlet or other document or the name of some voter who is responsible therefor with his residence and street address, if any, together with the name of the publisher, printer or the producer thereof with his residence and street address, if any, or his place of business.

History: En. Sec. 1, Ch. 74, L. 1951.

Title of Act

An act making it unlawful for any person to publish, print, mimeograph, type or otherwise produce any dodger, bill, handbill, pamphlet or other document designed to aid, injure or defeat any candidate or any political party or organization or

measure before the people, unless it is stated therein the name of the chairman or secretary, or the names of the other officers of the political or other organization producing the same, or the name of some voter who is responsible therefor with his residence and street address, if any, together with the name of the publisher, printer or other producer thereof

with his residence and street address, if any, or his place of business, and providing that violation thereof shall constitute a

misdemeanor, and repealing all acts and parts of acts in conflict herewith.

94-1476. Violation of preceding section a misdemeanor. Any person who shall violate the provisions of this act shall be guilty of a misdemeanor.

History: En. Sec. 2, Ch. 74, L. 1951.

Elections 309.

29 C.J.S. Elections § 334.

Repealing Clause

Section 3 of Ch. 74, L. 1951 repealed all acts and parts of acts in conflict therewith.

CHAPTER 18—FALSE PERSONATION AND CHEATS

Section 94-1805. Obtaining money, property or services by false pretenses.

94-1822. Inducing engagement as an advertising agency for sale of real property by misrepresentation of fact concerning services—penalty.

94-1805. (11410) Obtaining money, property or services by false pretenses. Every person who knowingly and designedly, by false or fraudulent representation or pretenses, defrauds any other person of money or property, including evidence of indebtedness, or who knowingly and designedly obtains the service of another by false or fraudulent representation or pretenses, or who causes or procures others to report falsely of his wealth or mercantile character, and by thus imposing upon any person obtains credit, and thereby fraudulently receives services or gets into possession of money or property, is punishable in the same manner and to the same extent as for larceny of the money or the value of the property or services so obtained.

History: En. Sec. 933, Pen. C. 1895; re-en. Sec. 8683, Rev. C. 1907; amd. Sec. 1, Ch. 60, L. 1921; re-en. Sec. 11410, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1959. Cal. Pen. C. Sec. 532.

Amendment

The 1959 amendment inserted the words "or who knowingly and designedly obtains the service of another by false or fraudulent representation or pretenses"; inserted the words "receives services or" and substituted the words "the value of the property or services" for the word "property."

Application

A defendant charged under section 94-1806 with obtaining property by means of a confidence game cannot be convicted on evidence which shows that the defendant obtained such property "by false or fraudulent representation or pretenses" under this section because such crimes are separate and distinct offenses. *State v. Allen*, 128 M 306, 275 P 2d 200, 201. (Dissenting opinions, 128 M 306, 275 P 2d 200, 205, 206.)

Evidence of an Offense Not Charged in the Information

When a county officer is charged with collecting illegal fees, by presenting a

claim under the name of another to the county for work which was within his duties as county surveyor it was prejudicial error for the court to admit evidence of another claim submitted by the county surveyor to the county which offense was not charged in the information (*Justices Bottomly and Angstman dissenting*). *State v. Hale*, 126 M 326, 249 P 2d 495, 496.

Information

Where a statute uses general or generic words in defining the offense the information or indictment bottomed upon that statute must specify the particular facts which constitute the offense. *State v. Hale*, 129 M 449, 291 P 2d 229, 232, distinguished in 135 M 449, 453, 340 P 2d 157, 160. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

An information may be drawn consistent with this section which is not vulnerable to the objection that it is bad for duplicity for charging an offense under section 94-3908 (presenting fraudulent claim to a county). *State v. Hale*, 129 M 449, 291 P 2d 229, 234. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

Information which avers only that the defendant made a "false" or "fraudulent" representation is not sufficient. It must expressly allege the facts which made the

stated pretense false. *State v. Hale*, 129 M 449, 291 P 2d 229, 232. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

To characterize a representation as "false" or "fraudulent" does not suffice to state the offense. The particulars in which the representations relied upon are false must appear from facts directly and positively set out. *State v. Hale*, 129 M 449, 291 P 2d 229, 231. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

Operation and Effect

When a county officer is charged with collecting illegal fees by presenting a claim under the name of another to the county for work which was within his duties as county surveyor, the public poli-

cy of this state under section 94-5516 is that, as a matter of defense, the county officer is entitled to offer evidence of his good faith or honest mistake and the value received by the county. *State v. Hale*, 126 M 326, 249 P 2d 495, 496.

References

Cited or applied in *State v. Keller*, 126 M 142, 246 P 2d 817, 821.

Obtaining payment by debtor on valid indebtedness by false representation as criminal false pretenses. 20 ALR 2d 1266.

False representations as to income, profits, or productivity of property as fraud. 27 ALR 2d 14.

94-1806. (11411) Confidence games.

Application

Where evidence disclosed that all the defendant did, to induce the complaining witness to give him the ring, was, after she had broached the subject of oil wells, to say, in effect that he had an oil well in Louisiana from which he received \$800 a month income, and that he would cut her in for \$200 of that income. The jury could assume such statements were false, since, according to the complaining witness, neither the first \$200 due July 15th, nor any other was ever paid to her. Defendant should have been prosecuted under section 94-1805 "obtaining money or property by false pretenses," not under this section "confidence games." *State v. Allen*, 128 M 306, 275 P 2d 200, 205. (Dissenting opinions, 128 M 306, 275 P 2d 200, 205, 206.)

Confidence or Bunco Game

It is a crime to obtain or attempt to obtain money by the use of a confidence game. *State v. Hale*, 134 M 131, 328 P 2d 930, 934.

Construction of Statute

The element of confidence must be pres-

ent in order to maintain an action under this section. *State v. Hale*, 134 M 131, 328 P 2d 930, 934.

The confidence games described in this section are those whereby an elaborate scheme is developed to play upon the credulity or sympathy or some other trait of the victim. *State v. Hale*, 134 M 131, 328 P 2d 930, 934.

Operation and Effect

A defendant charged under this section with obtaining property by means of a confidence or bunco game cannot be convicted on evidence which shows that defendant obtained such property "by false or fraudulent representation or pretenses" under section 94-1805, because such crimes are separate and distinct offenses. *State v. Allen*, 128 M 306, 275 P 2d 200, 201. (Dissenting opinions, 128 M 306, 275 P 2d 200, 205, 206.)

Separate and Distinct Crime

This statute covers a separate and distinct crime from that covered by section 94-2406. *State v. Hale*, 134 M 131, 328 P 2d 930, 934.

94-1822. Inducing engagement as an advertising agency for sale of real property by misrepresentation of fact concerning services—penalty. Any person engaged or purporting to be engaged as an advertising agency for real property who accepts or solicits money or other considerations for himself or for any other person, in connection with the execution by an owner of real property of any contract whereby such owner authorizes such person to serve as an advertising agency for the sale of such property, and who for the purpose of inducing the owner of such property to enter into such a contract makes or procures the making of any oral or written representation of fact with respect to the nature or extent of the services to be rendered for or on behalf of such owner by any such person under such contract, with reasonable ground for belief that such representation

is not true, or who refrains from disclosing to such owner, any matter of fact pertinent to the nature or extent of the services to be rendered for or on behalf of such owner by any such person under such contract is guilty of a felony and shall be imprisoned for not less than one (1) year nor more than five (5) years.

History: En. Sec. 1, Ch. 125, L. 1959.

Title of Act

An act declaring that the acceptance or solicitation of money or other considerations in connection with any contract for the advertising of real property by misrepresentation or by failing to disclose facts pertinent to such contract is a felony and prescribing a penalty; containing a repealing clause.

Repealing Clause

Section 2 of Ch. 125, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Cross-Reference

Real Estate License Act to be construed as supplemental to this section, sec. 66-1946.

CHAPTER 20—FORGERY AND COUNTERFEITING

94-2001. (11355) Forgery of wills, conveyances, etc.

Cross-Reference

State tax stamps, counterfeiting, sec. 94-35-260.

Act Committed by Indian on Indian Reservation

State court was without jurisdiction to try an Indian for forgery of a check where the Indian attempted to cash the check on a store located within the boundaries of an Indian Reservation. The defendant is still a ward of the federal government and is still under the exclusive jurisdiction of the federal government for all acts and crimes defined and made punishable by the laws of Congress, when committed within the exterior boundaries of an Indian reservation. *State ex rel. Bokas v. District Court*, 128 M 37, 270 P 2d 396.

Non-negotiable Instruments

The fact that a warrant is non-negotiable does not affect the question as to whether one who passes it when containing a known forged indorsement is guilty of forgery. *State v. Phillips*, 127 M 381, 264 P 2d 1009, 1011.

Passing of Auditor's Warrant

The statute when speaking of indorsements while not specifically mentioning auditors' warrants does cover "orders."

94-2004. (11358) Punishment of forgery.

References

Cited in *State v. Brown*, 136 M 382, 351 P 2d 219, 222.

94-2006. (11360) Possessing or receiving forged or counterfeit bills, etc.

References

Cited or applied in *State v. Rother*, 130

The indorsement of an auditor's warrant amounts to the indorsement of an order within the meaning of the statute. *State v. Phillips*, 127 M 381, 264 P 2d 1009, 1011.

Testimony of Person Forging Indorsement as Corroboration

The testimony of the person who forged the indorsement on a warrant and who was not implicated in the matter of passing or uttering the instrument is corroborating evidence to the testimony of an accomplice of the defendant charged with uttering the forged instrument, since the person who forged the indorsement is not an accomplice to the defendant who uttered the instrument as the making of the instrument and the uttering of it are two separate crimes although they both constitute forgery. *State v. Phillips*, 127 M 381, 264 P 2d 1009, 1014. (See, however, the dissenting opinions in 127 M 381, 264 P 2d 1009, 1016, 1018.)

Unnecessary for Instrument to Create Civil Liability

It is not necessary that the forged instrument should create civil liability before it can be held to be forgery. *State v. Phillips*, 127 M 381, 264 P 2d 1009, 1011.

M 357, 303 P 2d 393 at 406 (dissenting opinion).

94-2007. (11361) Making, passing or uttering fictitious bills, etc.**Jurisdiction of Offense**

An enrolled member of an Indian tribe was subject to prosecution in state court for forgery where check was obtained from Indian agency office on reservation but was cashed in a town outside the boundaries of the reservation. Petition of Fox, — M —, 376 P 2d 726, 727.

The crime of forgery is committed in the place where the false, forged or counterfeit check is passed as true and genuine and the origin of the check has no bearing upon the crime. Petition of Fox, — M —, 376 P 2d 726.

Passing False Check

The crime of forgery encompasses the passing of a check as true and genuine when in fact it is false, forged or counterfeit. Petition of Fox, — M —, 376 P 2d 726.

Questions for Jury

Where defendant was charged with the crime of uttering and delivering a fictitious check, the intent to defraud and defendant's knowledge of the fictitious character of the check were questions for the jury. State v. Johnston, — M —, 367 P 2d 891, 893.

Restitution

It is no defense under this section that defendant has made restitution. State v. Johnston, — M —, 367 P 2d 891, 893.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 406 (dissenting opinion).

94-2008. (11362) Counterfeiting coin, bullion, etc.**References**

Cited or applied in State v. Rother, 130

M 357, 303 P 2d 393 at 406 (dissenting opinion).

94-2010. (11364) Possessing or receiving counterfeit coin, bullion, etc.**References**

Cited or applied in State v. Rother, 130

M 357, 303 P 2d 393 at 406 (dissenting opinion).

94-2012. (11366) Counterfeiting railroad tickets, etc.**References**

Cited or applied in State v. Rother, 130

M 357, 303 P 2d 393 at 406 (dissenting opinion).

CHAPTER 24—GAMBLING

Section 94-2429. Slot machines—possession unlawful.

94-2430. Slot machine defined.

94-2431. Person or persons defined.

94-2432. Penalty for possession or permitting use of slot machine.

94-2401. (11159) Gambling games prohibited—penalty, etc.**Compiler's Note**

That part of this section which relates to slot machines is probably superseded by secs. 94-2429 to 94-2432.

Cross-Reference

See note to sec. 94-2403. State v. Israel, 124 M 152, 220 P 2d 1003, 1011.

Constitutionality

This act and sections 84-5701, 84-5702 (since repealed) authorizing and licensing so-called trade stimulators is void and invalid as violative of § 2, Art. XIX of the Montana Constitution, which prohibits the legislature from authorizing lotteries. State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140, 141, 142.

Construction of Amendment

The 1937 amendment to this section which added the licensing provisions did not affect section 94-2404. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 996.

Prosecution of Gambling Laws

Actions for violation of the gambling laws may be prosecuted under either this section and section 94-2404 or under section 94-1001 et seq., the abatement law, or under each and all of such sections. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 1000.

Religious, Fraternal and Charitable Organizations

Religious, fraternal and charitable organizations and private homes are by

section 94-2403 exempt from the payment of license fees but are not exempt from the provisions of this act which existed prior to the 1937 amendment. *State ex rel. Replogle v. Joyland Club*, 124 M 122, 220 P 2d 988, 996; *State v. Israel*, 124 M 152, 220 P 2d 1003, 1011.

Slot Machines

Slot machines are not included among the enumerated "hickey" games nor among the "trade stimulators" from which the ban was lifted by the 1937 amendment known as the "Hickey Law." *State v. Israel*, 124 M 152, 220 P 2d 1003, 1010; *State ex rel. Olsen v. Crown Cigar Store*, 124 M 310, 220 P 2d 1029, 1032.

Information charging defendant with the operation of slot machines was not subject to demurrer as not charging an offense. *State v. Israel*, 124 M 152, 220 P 2d 1003, 1009.

This section, banning the possession of slot machines, has not been repealed by

sections 84-3601 to 84-3610 (since repealed). *State v. Engle*, 124 M 175, 220 P 2d 1015, 1016; *State ex rel. Olsen v. Crown Cigar Store*, 124 M 310, 220 P 2d 1029, 1032.

The ban against slot machines was not lifted by sections 84-5701, and 84-5702 (since repealed). *State ex rel. Olsen v. Crown Cigar Store*, 124 M 310, 220 P 2d 1029, 1032.

The operation of all slot machines is prohibited to all persons without exception. *State ex rel. Olsen v. Crown Cigar Store*, 124 M 310, 220 P 2d 1029, 1032.

References

Cited or applied in *State v. Read*, 124 M 184, 220 P 2d 1020; *State v. Tursich*, 127 M 504, 267 P 2d 641, 642; *State v. Porter*, 130 M 299, 300 P 2d 952.

Entrapment to commit offense with respect to gambling or lotteries. 31 ALR 2d 1212.

94-2403. Organizations excluded from act.

Construction

The words "this act" in this section mean the licensing provisions of section 94-2401 which were added by the 1937 Act but not the remainder of such section which was in existence prior to such 1937 amendment. *State ex rel. Replogle v. Joyland Club*, 124 M 122, 220 P 2d 988, 996.

Slot Machines

There is nothing in this law that makes it lawful for any person or any religious, fraternal or charitable organization, or any private home to run, conduct or keep any slot machine within the state of Montana. *State v. Israel*, 124 M 152, 220 P 2d 1003, 1011.

94-2404. (11160) Possession of gambling implements prohibited.

Cross-Reference

See note to sec. 94-2401. *State ex rel. Replogle v. Joyland Club*, 124 M 122, 220 P 2d 988, 1000.

Effect of Other Laws

This section was not affected by the 1937 amendment to section 94-2401. *State ex rel. Replogle v. Joyland Club*, 124 M 122, 220 P 2d 988, 996; *State ex rel. Olsen v. Crown Cigar Store*, 124 M 310, 220 P 2d 1029, 1032.

This section, banning the possession of slot machines, has not been repealed by sections 84-3601 to 84-3610 (since repealed). *State v. Engle*, 124 M 175, 220 P 2d 1015, 1016; *State ex rel. Olsen v. Crown Cigar Store*, 124 M 310, 220 P 2d 1029, 1032.

References

Cited or applied in *State v. Read*, 124 M 184, 220 P 2d 1020.

94-2406. (11162) Brace and bunco games prohibited.

Confidence or Bunco Game

Any game which is by this statute outlawed, may be a confidence or bunco game, for the design and conduct of those who use it gives it its character under this statute. *State v. Hale*, 134 M 131, 328 P 2d 930, 936.

Gambling Devices

The games described in this section are purported gambling devices so contrived, although masked as legitimate operations, to bilk the victim of his wager by manipulation. These games do not depend upon the active or passive emotions of the vic-

tim. *State v. Hale*, 134 M 131, 328 P 2d 930, 934.

"Morocco"

Defendant who used and dealt with game of "Morocco," a confidence game and bunco game, to win money from his victim was properly convicted of the crime prohibited by this section. *State v. Hale*, 134 M 131, 328 P 2d 930, 934, 935.

Penalty

The penalty of violating this statute is imposed upon every person who uses or deals with any game commonly known as

a confidence game or bunco, as well as one who wins. *State v. Hale*, 134 M 131, 328 P 2d 930, 933.

Purpose of Statute

This statute is aimed at person who uses or deals with a confidence game, or bunco game, and not so much against the inanimate paraphernalia so used. *State v. Hale*, 134 M 131, 328 P 2d 930, 936.

Separate and Distinct Crime

This statute covers a separate and distinct crime from that covered by section 94-1806. *State v. Hale*, 134 M 131, 328 P 2d 930, 934.

Use of Confidence Game

It is a crime to use or deal with a confidence game or bunco. *State v. Hale*, 134 M 131, 328 P 2d 930, 934.

94-2409. (11165) Maintaining gambling apparatus a nuisance.

Operation and Effect

Any article, machine or apparatus maintained or kept in violation of any of the provisions of sections 94-2401 or 94-2404 is a public nuisance. *State ex rel. Olsen v. Crown Cigar Store*, 124 M 310, 220 P 2d 1029, 1032.

Slot Machines

The using, operating, keeping, and maintaining for use, of slot machines constitutes a nuisance. *State ex rel. Replogle v. Joyland Club*, 124 M 122, 220 P 2d 988; *State v. Israel*, 124 M 152, 220 P 2d 1003, 1011; *State ex rel. Brown v. Buffalo Rapids Club*, 124 M 172, 220 P 2d 1014.

94-2410. (11166) Duty of public officer to seize gambling implements, etc.

Decree Requiring Sale Amended

Decree requiring sheriff to sell seized slot machines was amended on appeal to require the sheriff to destroy such machines. *State ex rel. Replogle v. Joyland Club*, 124 M 122, 220 P 2d 988, 1001.

References

Cited or applied in *State v. Israel*, 124 M 152, 220 P 2d 1003, 1011.

Forfeiture of property used in connection with gaming before trial of individual offender. 3 ALR 2d 751.

94-2411. (11167) Duty of magistrate to retain gambling implement, etc.

Return of Machines Erroneous

It was error for district court to order slot machines and other gambling equipment returned to defendant on an ex parte proceeding before the disposition of the

case and the order is void ab initio. *State v. Israel*, 124 M 152, 220 P 2d 1003, 1009.

References

Cited or applied in *State v. Engle*, 124 M 175, 220 P 2d 1015, 1017.

94-2412. (11167.1) Disposal of moneys confiscated, etc.

Cross-Reference

See note to sec. 94-2411. *State v. Israel*, 124 M 152, 220 P 2d 1003, 1009.

References

Cited or applied in *State v. Engle*, 124 M 175, 220 P 2d 1015, 1017.

94-2413. (11168) Authority to break and enter buildings where games, etc.

References

Cited or applied in *State v. Israel*, 124 M 152, 220 P 2d 1003, 1012.

94-2414. (11169) Duty of public officer to make complaint.

References

Cited in *State v. Israel*, 124 M 152, 220 P 2d 1003, 1012.

94-2416. (11171) Officers neglecting duty subject to forfeiture of office.

References

Cited in *State v. Israel*, 124 M 152, 220 P 2d 1003, 1012.

94-2417. (11172) Receiving money to protect offenders prohibited.

References

Cited in *State v. Israel*, 124 M 152, 220 P 2d 1003, 1012.

94-2418. (11173) Losses at gambling may be recovered in civil action.

Assignment of, or succession to, statutory right of action for recovery of money lost at gambling. 18 ALR 2d 999.

94-2419. (11174) Action may be brought by any dependent person.**References**

Cited or applied in *Miller v. Emerson*, 120 M 380, 186 P 2d 220.

94-2423. (11178) Immunity of witnesses.**Privilege or Immunity Must Be Claimed**

Even though it be assumed that the provisions of this section were broad enough to include testimony before a grand jury it would have no application where defendant failed to claim either privilege or immunity when called before the grand jury. *State v. Saginaw*, 124 M 225, 220 P 2d 1021, 1023, distinguished in 300 P 2d 953.

Testimony before Grand Jury

The words "grand jury" should not be

read into this section which gives immunity from prosecution to persons testifying before a "court or magistrate." *State v. Saginaw*, 124 M 225, 220 P 2d 1021, 1023.

Defendant cannot, because of testimony before grand jury, be immune from prosecution for offense charged in information filed by county attorney weeks before impanelment of a grand jury. *State v. Saginaw*, 124 M 225, 220 P 2d 1021, 1023; *State v. McRae*, 124 M 238, 220 P 2d 1025, 1027, distinguished in 300 P 2d 953.

94-2429. Slot machines—possession unlawful. From and after the passage and approval of this act, it shall be a misdemeanor and punishable, as hereinafter provided, for any person to use, possess, operate, keep or maintain for use or operation or otherwise, anywhere within the state of Montana, any slot machine of any sort or kind whatsoever.

History: En. Sec. 1, Ch. 197, L. 1949.

Title of Act

An act prohibiting the licensing, use, operation, keeping or maintenance of slot machines within the state of Montana; defining certain terms used in this act; providing penalties for the violation of this act and repealing all acts and parts of

acts in conflict herewith; providing for a referendum on this act; and providing for local option elections in counties on the question of the licensing and operation of slot machines and specifying the procedure for holding said election.

Gaming—79(1).

38 C.J.S. Gaming § 99.

94-2430. Slot machine defined. A slot machine is hereby defined as a machine operated by inserting a coin, token, chip or trade check therein by the player and from the play of which he obtains, or may obtain, money, checks, chips or tokens redeemable in money. Merchandise vending machines where the element of chance does not enter into their operation are not within the provisions of this act.

History: En. Sec. 2, Ch. 197, L. 1949.

94-2431. Person or persons defined. In addition to their ordinary meaning, the word "person" or "persons," as used in this act, shall include both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders and societies, including religious, fraternal and charitable organizations.

History: En. Sec. 3, Ch. 197, L. 1949.

94-2432. Penalty for possession or permitting use of slot machine. Any person, partnership, club, society, fraternal order, corporation, co-operative

association or any other person, individual or organization who violates any of the provisions of this act, or who permits the use of any slot machine, as herein defined, on any place or premises owned, occupied or controlled by him or it, shall be guilty of a misdemeanor and shall be punishable by a fine of not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00), or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 4, Ch. 197, L. 1949.

Repealing Clause—Effective Date

Section 5 of Ch. 197, L. 1949 read, "All acts and parts of acts in conflict herewith, particularly all laws of this state and all ordinances of cities and towns relating to the issuance of licenses for the operation of slot machines, are hereby repealed and this act shall take effect and be in force and effect on and after the 31st day of December, 1950, as to sections 1 to 6, inclusive, provided a majority of the votes cast on this issue are against the operation of slot machines, and if a majority of the votes so cast are

for the operation of slot machines, the act shall be in effect on said date as to sections 8 to 15, inclusive." At the general election in November, 1950, the majority of votes was against the operation of slot machines. Sections 7 to 16 of Ch. 197, L. 1949 are therefore omitted.

Separability of Provisions

Section 6 of Ch. 197, L. 1949 read, "If any part of this act shall be declared by any court of competent jurisdiction to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act."

CHAPTER 25—HOMICIDE

94-2501. (10953) Murder defined.

Conspiracy

A coconspirator may be found guilty of a crime committed by his fellow conspirator whether the fellow conspirator is alive or dead, competent or incompetent, at the time of his trial. *State v. Alton*, 139 M 479, 365 P 2d 527, 535.

All participants in a conspiracy may be found guilty of any of the degrees of murder or one or more may be found guilty

of each degree. *State v. Alton*, 139 M 479, 365 P 2d 527, 538.

References

Cited or applied in *State v. London*, 131 M 410, 310 P 2d 571.

Homicide in commission of felony where the killing was the act of one not a participant in the felony. 12 ALR 2d 210.

94-2502. (10954) Malice defined—express or implied.

Operation and Effect

It is not necessary to show pre-existing malice against the deceased and malice may be shown directly or may be inferred from a lack of provocation. *State v. London*, 131 M 410, 310 P 2d 571, 582.

Malice may be express or implied and on proof of homicide by the defendant, malice is presumed, but the presumption does not exist in the presence of evidence tending

to show that the act amounts only to manslaughter. *State v. Rivers*, 133 M 129, 320 P 2d 1004, 1006.

References

Cited or applied in *State v. Dillon*, 125 M 24, 230 P 2d 764, 767.

Inference of malice or intent to kill where killing is by blow without weapon. 22 ALR 2d 854.

94-2503. (10955) Degrees of murder.

Felony-murder Rule

Where the evidence disclosed that the defendant hired two men to set fire and burn his service station, and during the course of the arson the two men were burned and subsequently died, the defendant was guilty of first degree murder under the felony murder rule since any death directly attributable to a plot to commit

arson makes all the conspirators in the arson plot equally guilty of first degree murder. *State v. Morran*, 131 M 17, 306 P 2d 679.

Guilty of Lesser Offense

Where defendant was charged with murder in the second degree it was permissible for the jury to find him guilty of

involuntary manslaughter. *State v. Allison*, 122 M 120, 199 P 2d 279, 288.

References

Cited or applied in *State v. Dillon*,

125 M 24, 230 P 2d 764, 767; *State v. London*, 131 M 410, 310 P 2d 571.

Homicide: causing one, by threats or fright, to leap or fall to his death. 25 ALR 2d 1186.

94-2505. (10957) Punishment for murder.

Commutation of Sentence

Inmate of state prison, who along with his codefendant had been sentenced to life imprisonment on plea of guilty to first degree murder, was not entitled to release from custody because his codefendant had been released from prison after commutation of his sentence by the governor. *Goff v. State*, 139 M 641, 367 P 2d 557, 558.

Operation and Effect

Where there is evidence sustaining finding by trial court of murder in the first degree supreme court will not interfere with trial court's determination and the sentence of death. *State v. Palen*, 120 M 434, 186 P 2d 223, 224.

References

Cited in *Andres v. United States*, 332 U S 499, 92 L Ed 104, 68 S Ct 169; *Brown v. State*, 202 F Supp 29, 30.

94-2507. (10959) Manslaughter—voluntary and involuntary.

Subd. 2

Acts of Omission

Omission to perform an act required by law can be the basis for manslaughter. Hence, where evidence disclosed that a child, 5 months old, died due to starvation, and that his weight at death was only 5 pounds 14 ounces which was but ten ounces over his birth weight, and that the father and mother had the means with which to care for the child, the evidence would be sufficient to support the conviction of the parents for manslaughter. *State v. Bischoff*, 131 M 152, 308 P 2d 969.

The failure to obtain medical aid for one who is owed a duty is a sufficient degree of negligence as to constitute involuntary manslaughter provided death results from the failure to act. *State v. Mally*, 139 M 599, 366 P 2d 868, 872.

Burden of Proof

The state in prosecuting for manslaughter because of the failure to provide medical aid is not required as an element of their proof to show the ability on behalf of the defendant to furnish such aid. If a defendant could not obtain aid either through normal procedure or the poor laws, this is a matter for his defense. *State v. Mally*, 139 M 599, 366 P 2d 868, 872.

Criminal Negligence

Insofar as the offense of involuntary manslaughter is concerned, the proof of culpability is supplied by evidence of criminal negligence. *State v. Strobel*, 130 M 442, 304 P 2d 606, 617, overruled on another point, 134 M 519, 525, 333 P 2d 1017, 1021.

It is wholly unnecessary in involuntary manslaughter cases to superimpose upon

the requirement of the element of criminal negligence the further requirement that a determination must be made as to whether the act resulting in death might ordinarily be classified as malum in se or merely malum prohibitum, for, if the act is done in a manner which is criminally negligent, it thereby becomes malum in se and thereby includes the element of mens rea. *State v. Strobel*, 130 M 442, 304 P 2d 606, 617, overruled on another point, 134 M 519, 525, 333 P 2d 1017, 1021.

Wilful or evil intent is not an element of involuntary manslaughter. *State v. Pankow*, 134 M 519, 333 P 2d 1017, 1021.

Instructions

Where judge instructed the jury in the language of the statute thereby giving the jury the definitions of both voluntary and involuntary manslaughter, defendant could not complain on ground there was no evidence of voluntary manslaughter in the case where the jury found him guilty of involuntary manslaughter. *State v. Allison*, 122 M 120, 199 P 2d 279, 289.

Where defendant was charged with second degree murder but the court withdrew the murder charge from the jury and presented the question of the guilt or innocence of the defendant for the crime of manslaughter, an instruction charging the jury that the state must prove the "intent" alleged in the information could properly have been modified to apply to the crime of manslaughter, however, conviction will not be set aside where it appears that no prejudice resulted. *State v. Allison*, 122 M 120, 199 P 2d 279, 291.

Where evidence showed that defendant was drunk and that he drove his automo-

bile at a high rate of speed into the rear of another automobile going the same direction, causing it to catch fire and killing the occupants, the contention of defendant that he could not remember the events which transpired at that time did not establish an accident and instruction on responsibility for deaths caused by accident was not necessary. *State v. Souhrada*, 122 M 377, 204 P 2d 792, 796.

In prosecution for involuntary manslaughter the issue is one of criminal negligence rather than intent and giving of instruction that "intent is not an element of involuntary manslaughter" was not erroneous. *State v. Souhrada*, 122 M 377, 204 P 2d 792, 797.

Since the word "feloniously" is not necessary in the information it was not necessary that the word "feloniously" be defined by the court's instructions and court's erroneous definition could not have been prejudicial particularly where other instructions clearly advised the jury of the elements of the crime. *State v. Souhrada*, 122 M 377, 204 P 2d 792, 797.

Where the court instructed the jury that in order to find the defendant guilty it must find that the defendant committed an unlawful act, not amounting to a felony, and that the unlawful act was the proximate cause of the injury and death; and then in a later instruction defined criminal negligence as such that amounts to a wanton, flagrant, or reckless disregard of consequences or wilful indifference of the safety or rights of others, the instructions taken as a whole are correct. For while the former may, standing alone, be inaccurate or even erroneous, yet as qualified and explained by other portions of the charge, in *pari materia*, it fully and fairly submits the case to the jury. *State v. Bosch*, 125 M 566, 242 P 2d 477, 480.

Intent

A wilful or evil intent is not a requirement of involuntary manslaughter. *State v. Pankow*, 134 M 519, 333 P 2d 1017, 1021.

Operation and Effect

This section is a recognition of the frailty of human nature, and has as its purpose to reduce a homicide committed under the circumstances therein contemplated to the grade of manslaughter. *State v. Messerly*, 126 M 62, 244 P 2d 1054, 1056.

Photographs in Evidence

In a prosecution of defendant for failure to provide food to an infant child which resulted in the child's death, it was error to admit into evidence photographs of the body of the child which showed ghastly and gruesome looking sores or scars alleged to have been caused by dermatitis. The charge was for failure to provide food and not for the failure to provide medical care and such photographs in no way went to the proof of starvation. Their purpose could only arouse the human feelings of the jury without aiding them in further understanding the crime charged. *State v. Bischert*, 131 M 152, 308 P 2d 969, 973.

Sufficiency of Evidence

Where defendant had invited another person to stay or "bunk" with him for the night, and thereafter, while in his tavern, shot through the screen and door of his bedroom striking such person who was on the other side of the door, jury was justified in returning a verdict of guilty of involuntary manslaughter. *State v. Allison*, 122 M 120, 199 P 2d 279, 289.

Defendant who deliberately drove his car around curve at a speed which he must have known was dangerous to human lives, those of himself and his passengers was properly convicted of involuntary manslaughter. *State v. Pankow*, 134 M 519, 333 P 2d 1017, 1019.

In order to convict a person for manslaughter because of failure to provide medical aid it must appear from the evidence that the defendant's failure to obtain medical aid was the proximate cause of death. *State v. Mally*, 139 M 599, 366 P 2d 868, 872.

Sufficiency of Information

Information for manslaughter against driver of death car was sufficient where it was in the form prescribed by section 94-6404, complied with the requirements of sections 94-6403, 94-6405, and met the tests provided by section 94-6412. *State v. Haley*, 132 M 366, 318 P 2d 1084, 1085.

Verdict of Manslaughter on Charge of Murder

Where defendant was charged with murder in the second degree it was permissible for the jury to find him guilty of involuntary manslaughter. *State v. Allison*, 122 M 120, 199 P 2d 279, 288.

94-2510. (10962) Proof of corpus delicti.

References

Cited or applied in *State v. Storm*, 127

M 414, 265 P 2d 971, 974 (concurring opinion).

94-2511. (10963) Excusable homicide.**Instructions**

Refusal to give instruction under this section was not reversible error in view of other instructions given. *State v. Allison*, 122 M 120, 199 P 2d 279, 289.

Homicide in commission of felony where the killing was the act of one not a participant in the felony. 12 ALR 2d 210.

94-2512. (10964) Justifiable homicide by public officers.

Homicide in commission of felony where the killing was the act of one not a participant in the felony. 12 ALR 2d 210.

94-2513. (10965) Justifiable homicide by other persons.

Homicide in commission of felony where the killing was the act of one not a participant in the felony. 12 ALR 2d 210.

CHAPTER 26—KIDNAPING

Section 94-2604. Prisoner holding hostage.

94-2601. (10970.1) Kidnaping—penalty—place of trial.

Seizure or detention for purpose of committing rape, robbery, or similar of-

fense as constituting separate crime of kidnaping. 17 ALR 2d 1003.

94-2602. (10970.2) Kidnaping with intent to send person, etc.**Question for Jury**

Where defendant is charged with kidnaping with intent to secretly confine a prison guard it was a question for the jury whether defendant was acting under duress or coercion because of threats made to him by other convicts participating in riot. *State v. Walker*, 139 M 276, 362 P 2d 548, 550.

State v. Frodsham, 139 M 222, 362 P 2d 413, 419.

On the trial of defendant charged with kidnaping with intent to secretly confine a prison guard a showing of actual physical violence or threat of personal injury are not required to prove the force necessary to establish the crime. *State v. Walker*, 139 M 276, 362 P 2d 548, 550.

Sufficiency of Evidence

Defendant was guilty of confining prison guard secretly against his will where the evidence showed that defendant, an inmate of the state prison, walked behind prison guard with a knife, after another inmate had disarmed the guard, until the inmates had placed the guard in isolation.

Sufficiency of Information

An information under this section is sufficient if it contains a statement of facts constituting the offense charged in ordinary and concise language so as to enable a person of common understanding to know what was intended. *State v. Randall*, 137 M 534, 353 P 2d 1054, 1056.

94-2604. Prisoner holding hostage. Every person committed to the Montana state prison, who, while at such state prison or while being conveyed to or from the Montana state prison, or while at a state prison farm or ranch, or while being conveyed to or from any such place, or while under the custody of prison officials, officers or employees, or while escaping or attempting to escape therefrom, holds as hostage any person within the state prison or who, unlawfully, by force or threat of force holds any person or persons against their will shall be guilty of a felony and shall be imprisoned in the state prison for a term not less than ten (10) years, such term of imprisonment to commence from the time he would have otherwise been released from said prison.

History: En. Sec. 1, Ch. 128, L. 1961.

Effective Date

Section 2 of Ch. 128, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 2, 1961.

Title of Act

An act prohibiting persons committed to the state prison from holding hostages or from unlawfully holding persons against their will and fixing the penalty therefor; and providing for an effective date.

CHAPTER 27—LARCENY AND FALSIFICATION OF PUBLIC RECORDS AND JURY LISTS

Section 94-2702. Uttering fraudulent checks or drafts—evidence.

94-2701. (11368) Larceny defined.

Civil Liability

In action based upon indemnity bond issued by defendant to indemnify plaintiff against loss from fraud or dishonesty of its station agent, allegation in complaint that the agent while in possession of money and property belonging to plaintiff, had wrongfully and dishonestly appropriated plaintiff's products and cash money, sufficiently stated a cause of action on which to predicate civil liability. *Waite v. Standard Accident Ins. Co.*, 132 M 220, 315 P 2d 989, 992.

Instructions

Conviction under this section requires proof of specific intent and an instruction that "when an unlawful act is shown to have been deliberately committed for the purpose of injuring another, it is presumed to have been committed with a malicious and guilty intent. The law also presumes that a person intends the ordinary consequences of any voluntary act committed by him" was erroneous. *State v. Garney*, 122 M 491, 207 P 2d 506, distinguished in 135 M 139, 147, 337 P 2d 924, 929.

Larceny by Indians on Indian Territory

A state district court was without jurisdiction to convict an Indian of larceny which occurred on Indian territory since

under Acts of Congress (U. S. C. Tit. 18, §§ 1153, 3242) such an offense is within the exclusive jurisdiction of the United States. *State v. Pepion*, 125 M 13, 230 P 2d 961.

Proof of Intent

The intent required may be found from the facts and circumstances surrounding the transaction, but the mere existence of an unpaid debt does not demonstrate any intent fraudulently to appropriate the property. *State v. Smith*, 135 M 18, 334 P 2d 1099, 1102.

Sufficiency of Information

An information charging grand larceny by defendant, laid in the terms of this section is sufficient without particularity, so long as it enables the defendant to prepare a defense. *State v. Fairburn*, 135 M 449, 340 P 2d 157.

An information which charges the offense of larceny by a selling agent in the language of this section is sufficient and not vulnerable to a general demurrer; there is no requirement that the agency be detailed, and, as between owners, the amount of money stolen from each need not be particularized. *State v. Fairburn*, 135 M 449, 340 P 2d 157.

94-2702. (11369) Uttering fraudulent checks or drafts—evidence.

Any person who for himself or as the agent or representative of another or as an officer of a corporation, wilfully, with intent to defraud shall make or draw or utter or deliver, or cause to be made, drawn, uttered or delivered, any check, draft or order for the payment of money upon any bank or depository, or person, or firm, or corporation, knowing at the time of such making, drawing, uttering or delivery that the maker or drawer has no funds or insufficient funds in or credit with such bank or depository, or person, or firm, or corporation, for the payment of such check, draft, or order in full upon its presentation, although no express representation is made with the reference thereto, shall upon conviction be punished as follows: If there are no funds in or credit with such bank or depository, or person, or firm, or corporation, for the payment of any part of such

check, draft or order, upon presentation, then in that case the person convicted shall be punished by imprisonment in the state prison not exceeding five (5) years, or by a fine not exceeding five thousand dollars (\$5,000.00) or by both such fine and imprisonment; if such check, draft or order be for a sum of twenty-five dollars (\$25.00) or less, and there are some but not sufficient funds in or credit with such bank, or depository, or person, or firm, or corporation, for the payment of such check, draft or order in full, then in that case the person so convicted shall be punished by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding three hundred dollars (\$300.00) or by both such fine and imprisonment; if such check, draft or order be for a sum greater than twenty-five dollars (\$25.00) and there are some but not sufficient funds in or credit with such bank, or depository, or person, or firm, or corporation, for the payment of such check, draft or order in full upon its presentation, then in that case the person so convicted shall be punished by imprisonment in the state prison not exceeding five (5) years, or by a fine not exceeding five thousand dollars (\$5,000.00) or by both such fine and imprisonment. As against the maker or drawer thereof, the making, drawing, uttering or delivering of such check, draft or order as aforesaid shall be prima facie evidence of intent to defraud and of knowledge of no funds or insufficient funds, as the case may be, in or credit with such bank, or depository, or person, or firm, or corporation, for the payment of such check, draft or order in full upon its presentation, provided such maker or drawer shall not have paid the drawee thereof the amount due thereon, within five (5) days after receiving notice that such check, draft, or order has not been paid by the drawee. The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank, depository, person, firm or corporation, for the payment of such check, draft or order.

History: En. Sec. 881, Pen. C. 1895; re-en. Sec. 8643, Rev. C. 1907; amd. Sec. 1, Ch. 63, L. 1919; re-en. Sec. 11369, R. C. M. 1921; amd. Sec. 1, Ch. 135, L. 1957. Cal. Pen. C. Sec. 476a.

Amendment

The 1957 amendment made numerous changes in this section. For section prior to amendment see parent volume.

Repealing Clause

Section 2 of Ch. 135, Laws 1957, repealed all acts and parts of acts in conflict therewith.

Operation and Effect

Held, that where a person was convicted under this section, the proper procedure for review of errors was by appeal under

the statutes and not by seeking at a later date the common-law writ of coram nobis. Were it shown that the defendant's case was exigent, as for example, that although innocent of any crime he was nevertheless arbitrarily sentenced and wrongfully imprisoned under that sentence, and if then the existing remedies by appeal as prescribed by our statutes and as well the usual writs to which this court customarily turns to prevent an injustice were found in truth inadequate, the court would not hesitate to design a further remedial writ so that the court could meet the emergency and attain the ends of justice, otherwise denied. *State v. Zumwalt*, 129 M 529, 291 P 2d 257, 260. (Dissenting opinion, 129 M 529, 291 P 2d 257, 262 based on the opinion that the defendant was innocent of the crime charged and arbitrarily sentenced.)

94-2704. (11371) Grand larceny defined.

Aiding and Abetting

While the statute defines larceny as the taking of property from the person of another yet it is sufficient to show defendant's guilt that he aided or abetted in the com-

mission of the crime under section 94-6423 because all persons concerned in the commission of a crime are principals under section 94-204. *State v. Maciel*, 130 M 569, 305 P 2d 335, 336.

Disposal of Stolen Property

If the crime of larceny has been completed, i. e., the taking and carrying away of the property has come to an end, then anyone subsequently assisting the thieves in the disposal of the stolen property would not be guilty of larceny. *State v. Guay*, 138 M 362, 357 P 2d 19, 22.

Effect of Ownership Not Proven as Alleged

Where the information alleges the ownership of the property, such allegation must be proven; proof of a brand only is not sufficient proof of the ownership of an animal bearing such brand. *State v. Elmore*, 126 M 232, 247 P 2d 488, 492.

Larceny by Bailee

Where defendant charged with grand larceny by bailee did not deny that he received a check from the complaining witness, but his defense was that it was a loan instead of a payment for an automobile, evidence as to whether the check was a loan or payment for the automobile was admissible over objection that it permitted a witness to vary a written instrument by parol testimony. *State v. Ahl*, — M —, 371 P 2d 7, 9.

Defendant, who admitted title to automobile in the complaining witness and that he accepted and took custody of a check, and agreed that the money was to pay for the automobile, but failed to deliver the automobile, requiring the complaining witness to again pay for it,

violated his trust as bailee by appropriating the money to his own use and was guilty of grand larceny by bailee. *State v. Ahl*, — M —, 371 P 2d 7, 10.

Operation and Effect

Conviction for larceny cannot be sustained where the evidence connecting the defendant with the hide and asportation of a live steer amounts to no more than suspicion and conjecture. *State v. Elmore*, 126 M 232, 247 P 2d 488, 492.

It is grand larceny to take money from the person of another with a felonious intent no matter what the amount is that is taken. *State v. Peschon*, 131 M 330, 310 P 2d 591, 595.

Conviction of defendant of grand larceny of an automobile was reversed where the actual taking and asportation of the car in question was not proven. *State v. Fairbanks*, — M —, 370 P 2d 497, 499. (Dissenting opinions, — M —, 370 P 2d 497, 500.)

Transporting of Stolen Property

Where one joins with a person, or persons in committing the crime of larceny and assists in the transporting and disposition of property which he knows to be stolen, he may be convicted of larceny. This is true even though the one assisting in the transporting and disposing of the stolen property was not in any manner connected with the initial taking of the property. *State v. Guay*, 138 M 362, 357 P 2d 19, 22.

94-2706. (11373) Punishment of grand larceny.**Plea of Guilty**

Defendant's plea of "guilty" to information charging him with grand larceny rendered him subject to a sentence of "not less than one nor more than fourteen years" imprisonment, depending upon the view taken by the trial judge of the evidence to be presented to him, in open court, showing circumstances either in aggravation or mitigation of punishment. *Kuhl v. District Court*, 139 M 536, 366 P 2d 347, 351.

The extent of defendant's punishment on plea of guilty to grand larceny should have been determined by the exercise of a sound discretion on the part of the trial judge after the circumstances had been "presented by the testimony of witnesses examined in open court" specifically

provided for in sections 94-7813 and 94-7814 subject to the provisions of section 94-7831. *Kuhl v. District Court*, 139 M 536, 366 P 2d 347, 351.

Reduction of Sentence

The sentence of a defendant, who pleaded guilty to grand larceny, to four years in the state prison was reduced to one year by the supreme court where trial court passed sentence upon receipt of private reports without allowing defendant or his counsel to learn of the representations in the reports and a hearing to present evidence to refute such representations as provided in sections 94-7813 and 94-7814. *Kuhl v. District Court*, 139 M 536, 366 P 2d 347, 365.

94-2717. (11384) Claim of title, ground of defense.**Evidence of Intent**

Where a selling agent is charged with larceny and sets up the defense of appro-

priating a customer's check under claim of right as a commission, testimony of clergyman concerning conversation had be-

tween himself and accused as to prior statements made by owner to agent, is inadmissible as hearsay since it is a self-

serving declaration. *State v. Fairburn*, 135 M 449, 340 P 2d 157.

94-2721. (11388) Receiver of stolen property.

Essential Elements of Crime

Proof that the defendant knew the property was stolen is an essential element of the crime. The evidence is not sufficient where the state relies on a bill of sale which describes "3 cow hides red no brand" and in fact the hides had brands and cattle was missing from the brand owners, while the defendant proves that when he received the hides they were bundled up and so stiffly frozen that they could not be examined to see if they had brands. *State v. Gilbert*, 126 M 171, 246 P 2d 814, 815.

Operation and Effect

Conviction for receiving stolen goods cannot be sustained where the information charged that the defendant received

a deepfreeze knowing the same to have been stolen from the true owner, Missoula County, while the facts were that the defendant was the county surveyor and he ordered a deepfreeze from a company and charged it to the county. Since the acts of the surveyor were unlawful, the county never purchased the freezer and never had it in its possession and at no time had title to the deepfreeze; therefore, Missoula County was never the owner from whom it was stolen as charged in the information. *State v. Bourdeau*, 126 M 266, 246 P 2d 1037, 1038.

References

Kuhl v. District Court, 139 M 536, 366 P 2d 347, 348.

CHAPTER 28—LIBEL

Section 94-2807. Publishing a true report of public proceedings privileged.

94-2807. (10995) Publishing a true report of public proceedings privileged. No reporter, editor, or proprietor of any newspaper, nor any owner, licensee, or operator of a visual or sound radio broadcasting station or network of stations, nor any agent or employee of any such owner, licensee, or operator, is liable to any prosecution for a fair and true report of any judicial, legislative, or other public official proceedings, or of any statement, speech, argument, or debate in the course of the same, except upon proof of malice in making such report, which is not implied from the mere fact of publication or broadcast.

History: En. Sec. 436, Pen. C. 1895; re-en. Sec. 8331, Rev. C. 1907; re-en. Sec. 10995, R. C. M. 1921; amd. Sec. 1, Ch. 13, L. 1951. Cal. Pen. C. Sec. 254.

Amendment

The 1951 amendment inserted the words "nor any owner, licensee, or operator of a visual or sound radio broadcasting station or network of stations, nor any agent or employee of any such owner, licensee, or operator," and "or broadcast."

Repealing Clause

Section 2 of Ch. 13, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 13, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 2, 1951.

CHAPTER 30—LOTTERIES

94-3001. (11149) Lottery defined.

Numbers Games

A numbers game, whether called Chinese lottery, "The Crown Game," "The Crown punchboard game" or any other game is a lottery. *State ex rel. Olsen v. Crown Cigar Store*, 124 M 310, 220 P 2d 1029, 1032.

Punch Boards

Punch boards constitute a lottery. *State*

ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140, 141.

In an action for violation of this section it was no defense that the defendant had offered to pay for the operation of such punch boards in accordance with Ch. 201, Laws 1951, which purports to license trade stimulators such as punch boards since it is not competent for the

legislature to authorize lotteries in view of Const. Art. 19, sec. 2 and the case of State ex rel. Harrison v. Deniff. State v. Tursich, 127 M 504, 267 P 2d 641, 642.

Slot Machines

The operation of a slot machine is a lottery and banned by the criminal laws of this state. State v. Marek, 124 M 178, 220 P 2d 1017, 1019; State v. Read, 124 M 184, 220 P 2d 1020; State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

Valuable Consideration

Where one is required to make an out-

lay of money in order to participate in a scheme whereby an award is made by chance, the participant pays valuable consideration for the chance to participate, notwithstanding the fact he may also receive merchandise at the same time that the outlay is made. State v. Cox, 136 M 507, 349 P 2d 104. (State ex rel. Stafford v. Fox-Great Falls Theatre Corp., 114 M 52, 132 P 2d 689, distinguished.)

References

Cited in State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 1000.

94-3003. (11150) Punishment for drawing lottery.

Cross-Reference

See note to sec. 94-3001. State v. Marek, 124 M 178, 220 P 2d 1017, 1019.

Entrapment to commit offense with respect to gambling or lotteries. 31 ALR 2d 1212.

94-3011. (11158) Punishment.

Cross-Reference

See note to sec. 94-3001. State v. Marek, 124 M 178, 220 P 2d 1017, 1019.

CHAPTER 32—MALICIOUS INJURIES TO RAILROADS, HIGHWAYS AND OTHER PROPERTY

Section 94-3203. Tampering with telegraph, telephone and electric systems—penalty.

94-3211. Removal, injury or destruction of telephone, telegraph and electric facilities—penalty.

94-3203. (11466) Tampering with telegraph, telephone and electric systems—penalty. Any person who maliciously and wilfully taps, or makes any connection with any telegraph or telephone line, wire, cable, or instrument, or electric power line, wire or cable belonging to another, or maliciously and wilfully reads, takes or copies any messages, communication or report intended for another passing over any such telegraph or telephone line, wire, or cable, in this state, or who wilfully and maliciously prevents, obstructs or delays by any means or contrivance whatsoever the sending, transmission, conveyance or delivery in this state of any message, communication or report by or through any telegraph or telephone line, wire or cable or who uses any apparatus to unlawfully do or cause to be done any of the acts hereinbefore mentioned, or who aids, agrees with, employs or conspires with any person or persons to unlawfully do, or permit or cause to be done, any of the acts hereinbefore mentioned, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three hundred dollars (\$300.00) nor more than one thousand dollars (\$1,000.00) or imprisonment in the county jail not exceeding one year, or both, in the discretion of the court. And it shall be unlawful for any person who, for nonpayment of dues, tolls, or other good and sufficient reasons, has been disconnected from service with any telephone, telegraph or electric light or power system in this state to connect

or allow himself to be connected with any such company lines without direct and express permission from the official authorized to permit such reconnection. Any person or persons who shall violate or cause to be violated this provision shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00) or imprisonment in the county jail for ten days, or both, in the discretion of the court.

History: En. Sec. 1033, Pen. C. 1895; re-en. Sec. 8738, Rev. C. 1907; re-en. Sec. 11466, R. C. M. 1921; re-en. Sec. 1, Ch. 66, L. 1929; amd. Sec. 2, Ch. 174, L. 1963. Cal. Pen. C. Sec. 591.

Amendment

The 1963 amendment deleted the words "displaces, removes, injures, destroys or obstructs any telegraph, telephone or electric light line, wire, cable, pole or conduit belonging to another, or the material or property appurtenant thereto, or maliciously and wilfully cuts, breaks" which followed "wilfully and maliciously" in the first clause of the section; and inserted "or electric power line, wire or cable" after

"telephone line, wire, cable, or instrument" near the beginning of the section.

Repealing Clauses

Section 3 of Ch. 174, Laws 1963 read "Section 94-3209 of the Revised Codes of Montana, 1947, is hereby repealed."

Section 4 of Ch. 174, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 5 of Ch. 174, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

94-3209. (11473) Repealed.

Repeal

This section (Sec. 1, Ch. 71, L. 1903), relating to interference with electric lines

or apparatus, was repealed by Sec. 3, Ch. 174, Laws 1963.

94-3211. Removal, injury or destruction of telephone, telegraph and electric facilities—penalty. Any person who wilfully and maliciously displaces, removes, injures or destroys any public telephone instrument or any part thereof or any equipment or facilities associated therewith, or who enters or breaks into any coin box associated therewith, or who wilfully and maliciously cuts, breaks, displaces, removes, injures or destroys any microwave facilities or any telegraph or telephone line, wire, cable, pole or conduit or an electric power line, cable, transformer, pole or conduit or facilities associated therewith belonging to another or the material or property appurtenant thereto is guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars (\$1,000.00) or by imprisonment in the state prison for not more than five (5) years, or by both such fine and imprisonment.

History: En. 94-3211 by Sec. 1, Ch. 174, L. 1963.

Title of Act

An act to amend Chapter 32 of Title 94 of the Revised Codes of Montana, 1947, relating to crimes involving malicious injuries to railroads, highways and other property, by adding thereto a new section to be numbered 94-3211, making it a felony for any person to wilfully and maliciously displace, remove, injure or destroy any public telephone instrument or part thereof or equipment or facilities associated therewith, or to enter or break into any coin box associated therewith, or to wilfully

and maliciously cut, break, displace, remove, injure or destroy any microwave facilities or any telegraph or telephone line, wire, cable, pole or conduit or electric power line, cable, pole, conduit or facilities associated therewith belonging to another or the material or property appurtenant thereto, and providing a penalty therefor, and by amending section 94-3203 of the Revised Codes of Montana, 1947, making it a misdemeanor to tamper with telegraph, telephone and electric systems, by deleting therefrom so much thereof as makes it a misdemeanor for any person to wilfully and maliciously displace, remove, injure, destroy or obstruct any telegraph,

telephone or electric light line, wire, cable, pole or conduit belonging to another, or the material or property appurtenant thereto, and providing it shall be a misdemeanor to wilfully or maliciously tamper with elec-

tric power lines; repealing section 94-3209 of the Revised Codes of Montana, 1947; repealing all acts and parts of acts in conflict herewith; and providing an effective date.

CHAPTER 33—MALICIOUS MISCHIEF GENERALLY

Section 94-3234. Injury to trees on public lands.

94-3305. (11478) Use of automobiles without consent of owners, etc.

References

Cited or applied in the dissenting opinion in *State v. Quinlan*, 126 M 52, 244

P 2d 1058, 1061; *United States v. Brickles*, 177 F Supp 944, 947.

94-3334. (11507) Injury to trees on public lands. Every person who commits a trespass on or any injury to any state lands or the improvements thereon, or who, without the proper authority, cuts, fells, girdles, injures or destroys any trees or timber upon any of the school, university or other state lands, or removes or attempts to remove the same, or knowingly purchases or receives such trees or timber, or advises the removal thereof, is guilty of a misdemeanor, and is also liable to the state for three (3) times the value of said trees or timber, or lumber into which the same are converted.

All fines collected and all moneys recovered by virtue of this section must be paid into the trust fund if the lands involved are held in trust either through deed or grant or be paid to the funds of the state departments administering such lands where lands not held in trust are involved.

History: Ap. p. Sec. 1, p. 256, L. 1891; en. Sec. 1076, Pen. C. 1895; re-en. Sec. 8773, Rev. C. 1907; re-en. Sec. 11507, R. C. M. 1921; amd. Sec. 1, Ch. 221, L. 1955.

Amendment

The 1955 amendment substituted that part of the second paragraph beginning with the words "trust fund * * *" for "school fund of the state."

CHAPTER 35—MISCELLANEOUS OFFENSES

Section 94-3527.1.	Possession of weapon by prisoner.
94-3579.	Firearms—use of by children under the age of fourteen years prohibited.
94-35-106.	Intoxicating liquors—penalty for giving or selling to any person under the age of twenty-one years.
94-35-106.1.	Jurisdiction of offenses.
94-35-106.2.	Possession of beer or liquor by minor—misdemeanor.
94-35-123.	Unlawful to dispense mescal button.
94-35-152.1.	Sale of prison-made goods on the open market prohibited.
94-35-152.2.	Contracts forbidden.
94-35-152.3.	Exchange of goods within the state.
94-35-152.4.	Regulation by board.
94-35-152.5.	Pricing by board.
94-35-152.6.	Advisory council—organization and duties.
94-35-152.7.	Purchase mandatory.
94-35-152.8.	Exceptions from mandatory provisions.
94-35-152.9.	Intentional violation.
94-35-152.10.	Authority to print and distribute catalogues.
94-35-152.11.	Penalties.
94-35-152.12.	"Open market" defined.
94-35-152.13.	Disposition of industries receipts.

- 94-35-152.14. Interstate sale or exchange between penal institutions prohibited.
- 94-35-152.15. Manufacture of license plates by penal institutions not prohibited—sale of surplus raised exclusively for inmates not prohibited.
- 94-35-152.16. Repair and maintenance of property of penal and custodial institutions by inmates not prohibited.
- 94-35-152.17. Board to provide for repair and maintenance work.
- 94-35-152.18. Institutions subject to act.
- 94-35-204. Stolen livestock—seizure and confiscating of vehicle used to transport.
- 94-35-221.1. Failure to relinquish party line or telephone for emergency call—penalty.
- 94-35-221.2. Lack of knowledge as defense—emergency as defense.
- 94-35-221.3. False pretext of emergency—penalty.
- 94-35-221.4. Printing of act in directories.
- 94-35-258. Endurance races of horses prohibited.
- 94-35-259. Penalty for running endurance horse race.
- 94-35-260. State tax stamps—failure to affix or cancel—removal—penalty—counterfeiting tax stamp or insignia of Montana or other state—penalty.
- 94-35-261. Importing or selling farm machinery with altered, defaced or removed serial number.
- 94-35-262. Altering, defacing or removing serial number on farm machinery.
- 94-35-263. Penalty.
- 94-35-264. Furnishing certain articles to prisoners in state prison—receiving such articles by prisoners—felony.
- 94-35-265. Abandoning or permitting abandoned icebox in dangerous condition—penalty.
- 94-35-269. Hunting in careless or reckless manner—failure to assist person injured or wounded—misdemeanor.
- 94-35-270. Delivery of grain containing toxic chemicals to public warehouses.
- 94-35-271. Penalty for violation.
- 94-35-271.1. Coloration of wheat, oats, rye or barley treated with injurious or toxic substances.
- 94-35-271.2. Sale or offering for sale product in violation of act prohibited.
- 94-35-271.3. Violation constitutes misdemeanor.
- 94-35-272. Unlawful operation, use, interference, or tampering of aircraft—penalty.
- 94-35-273. Switch blade knives—possession, selling, using, giving, or offering for sale—penalty—collectors.

94-3506. (10921) Arrests, seizure or levy upon property, etc.

False imprisonment: liability of private citizen for false arrest by officer.
21 ALR 2d 643.

94-3509. (10940) Attorneys forbidden to defend prosecutions, etc.

Improper Representation

Where prisoner was represented in a second case by court-appointed counsel who had formerly prosecuted him while serving as county attorney in a case resulting in the prior conviction with which

he was charged in the second case, the error, if any, should have been raised in the district court by a writ of error coram nobis and not by habeas corpus proceeding in the supreme court. *Butler v. State*, 139 M 437, 365 P 2d 822, 823.

94-3513. (11296) Repealed.

Repeal

This section (Sec. 752, Pen. C. 1895), relating to boxing and wrestling matches,

was repealed by Sec. 4, Ch. 171, Laws 1953.

94-3525. (11302) Carrying certain concealed weapons in cities, etc.

Forfeiture of weapon unlawfully carried, before trial of individual offender. 3 ALR 2d 752.

94-3527. (11304) Same—who excepted from act.**References**

Cited or applied in *State v. Nickerson*,
126 M 157, 247 P 2d 188, 192.

94-3527.1. Possession of weapon by prisoner. Every prisoner committed to the Montana state prison, who, while at such state prison, or while being conveyed to or from the Montana state prison, or while at a state prison farm or ranch, or while being conveyed to or from any such place, or while under the custody of prison officials, officers or employees, possesses or carries upon his person or has under his custody or control without lawful authority, a dirk, dagger, pistol, revolver, sling-shot, sword-cane, billy, knuckles made of any metal or hard substance, knife, razor, not including a safety razor, or other deadly weapon, is guilty of a felony and shall be punishable by imprisonment in the state prison for a term not less than five (5) years nor more than fifteen (15) years. Such term of imprisonment to commence from the time he would have otherwise been released from said prison.

History: En. Sec. 1, Ch. 131, L. 1961.

penalty therefor; and providing for an effective date.

Title of Act

An act relating to deadly weapons; prohibiting the carrying or possession of deadly weapons by persons committed to the Montana state prison and fixing the

Effective Date

Section 2 of Ch. 131, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 2, 1961.

94-3540. (10944) Criminal contempt.

Contempt for disobedience of orders in criminal matters where beyond court's jurisdiction. 12 ALR 2d 1059.

Right of witness to refuse to answer, on the ground of self-incrimination, as

to membership in or connection with party, society, or similar organization or group. 19 ALR 2d 388.

94-3573. (11567) Repealed.**Repeal**

This section (Sec. 1, Ch. 66, L. 1907), relating to the showing of motion pictures

depicting crimes, was repealed by Sec. 1, Ch. 52, Laws 1959, effective February 26, 1959.

94-3576. (10988) False imprisonment, definition and punishment.**Failure to Take Person Promptly before Magistrate**

In an action for false imprisonment brought by plaintiff against a sheriff and the surety on his official bond based on unnecessary delay in taking plaintiff be-

fore a magistrate, it was necessary that the plaintiff prove that a magistrate was available on the particular day when the false imprisonment allegedly occurred. *Rounds v. Bucher*, 137 M 39, 349 P 2d 1026.

94-3579. (11565) Firearms—use of by children under the age of fourteen years prohibited. It shall be unlawful for any parent, guardian, or other person, having the charge or custody of any minor child under the age of fourteen years, to permit such minor child to carry or use any firearms of any description, loaded with powder and lead, in public, except when such child is in the company of such parent or guardian or under the supervision of a qualified firearms safety instructor, who has been duly authorized by such parent or guardian.

History: En. Sec. 1, Ch. 111, L. 1907; Sec. 8879, Rev. C. 1907; re-en. Sec. 11565, R. C. M. 1921; amd. Sec. 1, Ch. 139, L. 1963.

Amendment

The 1963 amendment added "or under the supervision of a qualified firearms safety instructor, who has been duly au-

thorized by such parent or guardian" at the end of the section.

Effective Date

Section 2 of Ch. 139, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 2, 1963.

94-35-102, 94-35-103. (11314, 11259) Repealed.

Repeal

These sections (Sec. 1, Ch. 84, Laws 1903 and Sec. 696, Pen. C. 1895), relating

to the prohibition against Indians carrying firearms while off the reservation, were repealed by Sec. 1, Ch. 12, Laws 1953.

94-35-106. Intoxicating liquors—penalty for giving or selling to any person under the age of twenty-one years. Any person who shall sell, give away or dispose of intoxicating liquor to any persons under the age of twenty-one (21) years, shall for the first offense be subject to punishment not exceeding five hundred dollars (\$500.00) fine or by imprisonment not to exceed six (6) months in the county jail, or both such fine and imprisonment, and upon conviction for the second and subsequent offenses he shall be subject to punishment by fine of not less than five hundred dollars (\$500.00) nor more than two thousand dollars (\$2,000.00) or by imprisonment in the state penitentiary for not less than one (1) year nor more than five (5) years, or by both such fine and imprisonment. Nothing herein contained shall prevent the furnishing of intoxicating liquor to a person under twenty-one (21) years of age upon any physician's prescription where authorized by the laws of this state or the United States, nor the furnishing of wine for sacramental purposes.

History: En. Sec. 1, Ch. 143, L. 1949.

Compiler's Note

The section appearing in the parent volume (Sec. 1, Ch. 122, Laws 1927 as amended Sec. 1, Ch. 124, Laws 1941 and appearing in Revised Codes 1935 as Sec. 11048.1) was held to have been impliedly repealed by Ch. 105, Laws 1933 in *State v. Holt*, 121 M 459, 194 P 2d 651, and was specifically repealed by Sec. 3, Ch. 143, Laws 1949, and therefore the law set out above (Sec. 1, Ch. 143, Laws 1949) covering the same subject-matter has been given the same section number.

Title of Act

An act preventing the selling or giving away of intoxicating liquor to persons under twenty-one (21) years of age; providing penalties therefor: and repealing Section 11048.1 as amended by Chapter 124 of the Laws of the Twenty-seventh Legislative Assembly of the State of Montana, 1941, and all other acts and parts of acts in conflict herewith.

Alcoholic Content of Beer

It is not necessary that the information or the evidence show the alcoholic con-

tent of the beer in order to obtain a conviction. *State v. Winter*, 129 M 207, 285 P 2d 149, 156.

Construction

Under the above statute the selling to a minor is an offense without regard to whether the defendant had a license to sell or not. *State v. Winter*, 129 M 207, 285 P 2d 149, 155.

Entrapment

Defense of entrapment would not be available to a bar owner in a prosecution for selling liquor to a minor where it was shown that the public officers had given a minor money and sent him into the bar to purchase the liquor in order to obtain evidence. *State v. Parr*, 129 M 175, 283 P 2d 1086, 55 ALR 2d 1313. (Dissenting opinion, 129 M 175, 283 P 2d 1086, 1090.)

Operation and Effect

Misrepresentation of age by a minor is not a defense and a seller of intoxicating beverages must know the age of the purchaser and whatever false representations are made or precautions taken are immaterial where, in fact, the purchaser is under the age of twenty-one. *State v. Paskvan*, 131 M 316, 309 P 1019, 1021.

The purchaser under the age of twenty-one is not an accomplice to the seller. The purchaser has committed a crime too, but his is knowingly misrepresenting his qualifications for the purpose of obtaining liquor under section 4-413 the penalty for which is found in section 4-439. *State v. Paskvan*, 131 M 316, 309 P 2d 1019, 1020.

Proof of Offense

Corpus delicti may be proved by evidence that the defendant poured minor a drink from a bottle marked "Vodka." *State v. Moore*, 138 M 379, 357 P 2d 346, 348.

94-35-106.1. Jurisdiction of offenses. In cases of prosecution for first offenses under this act, the justice courts and district courts of the state of Montana shall have concurrent original jurisdiction. In all other cases the district courts of the state of Montana shall have exclusive original jurisdiction for violation of the provisions of this act.

History: En. Sec. 2, Ch. 143, L. 1949.

Repealing Clause

Section 3 of Ch. 143, Laws 1949 repealed section 11048.1, Revised Codes 1935, as amended by chapter 124, Laws 1941 and all other acts or parts of acts in conflict therewith.

Validity

This section was not repealed by implication by the amendment of section 4-413 by Ch. 71, Laws 1953. *State v. Wild*, 130 M 476, 305 P 2d 325, 328.

Any amendment of this section by Ch. 71, Laws 1953 (4-413) is governed by the

Validity

This section was not impliedly repealed by section 4-330 as amended by chapter 166, Laws of 1951. *State v. Winter*, 129 M 207, 285 P 2d 149, 156.

References

Cited or applied in *State v. Wild*, 130 M 476, 305 P 2d 325, 327.

Right to hearing before revocation or suspension of liquor license. 35 ALR 2d 1067.

provisions of section 43-510 which provides that "where a section or a part of a statute is amended, it is not to be considered as having been repealed and re-enacted but the portions which are not altered are to be considered as having been the law from the time when they were enacted." *State v. Wild*, 130 M 476, 305 P 2d 325, 328.

There is nothing in Ch. 71, Laws 1953 (4-413) which conflicts with the provisions of this section. *State v. Wild*, 130 M 476, 305 P 2d 325, 328.

References

Cited or applied in *State v. Winter*, 129 M 207, 285 P 2d 149, 155.

94-35-106.2. Possession of beer or liquor by minor—misdemeanor. Any person who shall not have reached the age of twenty-one (21) years and who shall have in his or her possession beer or liquor, shall be guilty of a misdemeanor.

History: En. Sec. 1, Ch. 125, L. 1957.

Title of Act

An act prohibiting the possession of beer

and liquor by persons under the age of twenty-one (21) years; providing a penalty.

94-35-107. (11048.2) "Intoxicating liquor" defined.

Vodka

While this section does not use the word vodka it does make any beverage containing more than one-half of one per cent of alcohol an intoxicating liquor and the

court may take judicial notice of the commonly accepted and generally understood definition of the word "vodka" under section 93-501-1. *State v. Wild*, 130 M 476, 305 P 2d 325, 334.

94-35-122. (10948) Maliciously procuring warrant.

References

Cited in *Wolf v. Colorado*, 338 U S 30, 93 L Ed 1782, 69 S Ct 1359.

94-35-123. (3202.1) Unlawful to dispense mescal button. That it shall be unlawful for any person, firm, corporation or association to sell, furnish, or give away, or offer to sell, furnish, or give away, or have in his or its

possession Peyote (Pellote), botanically known as *Lophophora Williamsii*; or *Agava Americana*, commonly known as the Mescal Button; or any compound, derivative, or preparation thereon; provided that the terms of this act shall not apply to transporting, possession or using said Peyote for religious sacramental purposes by any bona fide religious organization incorporated under the laws of the state of Montana.

History: En. Sec. 1, Ch. 22, L. 1923;
amd. Sec. 1, Ch. 53, L. 1957.

Repealing Clause

Section 2 of Ch. 53, Laws 1957 repealed all acts or parts of acts in conflict therewith.

Amendment

The 1957 amendment added the proviso clause.

94-35-143. (10952) Oppression and injury by an officer.

References

Cited in *Wolf v. Colorado*, 338 U S 30, 93 L Ed 1782, 69 S Ct 1359.

94-35-152.1. Sale of prison-made goods on the open market prohibited.

The sale on the open market of this state of all goods, wares, or merchandise, manufactured or mined, wholly or in part, by any penal or reformatory institutions is hereby prohibited. On and after the effective date of this act, the provisions of this act and all other regulations and laws of this state in effect at that time, and not inconsistent with this act will apply to all goods, wares, or merchandise, manufactured or mined, wholly or in part, by convicts or prisoners (except prisoners on parole or probation), and in any penal or reformatory institutions, and transported into the state of Montana for use or distribution to the same extent and in the same manner as if such goods and merchandise were so manufactured, produced, or mined within the state of Montana. Provided, that nothing contained herein, shall be construed to prevent the sale of agriculture [agricultural] and horticultural products through the usual channels of trade.

History: En. Sec. 1, Ch. 162, L. 1953.

Compiler's Note

The bracketed word "agricultural" was inserted by the compiler to indicate an apparent error.

Title of Act

An act to provide for regulating the production and disposition of prison-made goods; requiring the penal and custodial institutions of the state to purchase such goods except in certain instances; provid-

ing that repair and maintenance work may be done in the custodial and penal institutions of the state; creating an advisory council; providing for the organization, duties and purpose of said council; providing penalties for the violation of this act and repealing sections 94-35-153 to 94-35-162, inclusive, of the Revised Codes of Montana, 1947.

Convicts ~~13~~.

18 C.J.S. Convicts § 26.

94-35-152.2. Contracts forbidden. It is hereby declared unlawful for the state of Montana or any of its officers or agents; or any of the political subdivisions thereof, to enter into any contract or any arrangement for the labor of any of the inmates of any of the penal or reformatory institutions of this state.

History: En. Sec. 2, Ch. 162, L. 1953.

Convicts ~~10~~(1).

18 C.J.S. Convicts § 16.

94-35-152.3. Exchange of goods within the state. For the purpose of this act, the provisions of section 1 [94-35-152.1], relating to the sale on

the open market, shall not include the sale or exchange of convict-made goods produced in the penal or reformative institutions, to or with any penal, charitable, reformatory or custodial institutions, the major portion of whose maintenance is contributed by this state for the use and/or consumption of said institution, or for the use or consumption of the inmate of said institution.

History: En. Sec. 3, Ch. 162, L. 1953.

94-35-152.4. Regulation by board. The board of state prison commissioners is hereby authorized and directed to make such rules and regulations, governing the conducted industries in the penal or reformative institutions of this state, as will (a) Result in the manufacture, mining, or production of only such goods, wares or merchandise as may be used or needed in the several penal, custodial, charitable or reformatory institutions, the major portion of whose maintenance is contributed by this state, (b) Result in the manufacture at such penal or reformative institutions of as wide a variety of products as practicable, it being the purpose and intent of this provision to direct the management of said institutions, to so diversify the products of said institution as to eliminate the concentration of prison labor in any one or few industries, and (c) Accomplish to the greatest degree the rehabilitation of the inmates.

History: En. Sec. 4, Ch. 162, L. 1953.

94-35-152.5. Pricing by board. The board of state prison commissioners is hereby authorized and directed to establish and fix the sale price for the products of the industries in the penal or reformative institutions of the state. In no case shall prices so established and fixed for such products be greater than the prices existing in the open market for products of comparable quality.

History: En. Sec. 5, Ch. 162, L. 1953.

94-35-152.6. Advisory council—organization and duties. There is hereby created an advisory council for the purpose of studying existing methods of manufacture and distribution of prison-made goods with the view to improvements which will accomplish the ends and purposes set forth in section 3 [94-35-152.3] of this act. Said council shall consist of five (5) members to be appointed by the governor. One (1) of the members shall be a representative of labor, one (1) of industry, one (1) of agriculture, one (1) of consumer goods distribution and the state director of vocational education. The council shall organize within thirty (30) days after their appointment by the election of a chairman and secretary and such other officers as they may deem necessary. Their duties shall be to examine into all matters relating to the manufacture and distribution of prison-made goods, to consult with and advise the warden of the state prison in regard to existing prison industries, the management thereof and the advisability of establishing additional industries with the view to accomplishment of the results set forth in section 3 [94-35-152.3] of this act. From time to time, if they shall deem it advisable to do so, they shall render reports and make recommendations to the board of state prison commissioners. They shall prepare a full re-

port of their investigations, findings and recommendations. They shall be paid their actual and necessary expenses in connection with these duties.

History: En. Sec. 6, Ch. 162, L. 1953.

94-35-152.7. Purchase mandatory. On and after the effective date of this act, the penal and custodial institutions of this state shall purchase from the board of state prison commissioners all articles, if available, required by such penal or custodial institutions of the state, produced or manufactured by the said board in the penal or reformatory institutions of the state and no such article shall be purchased by any penal or custodial institution of the state from any other source unless excepted from the provisions of this section, as hereinafter provided.

History: En. Sec. 7, Ch. 162, L. 1953.

94-35-152.8. Exceptions from mandatory provisions. Exceptions from the operation of the mandatory provisions of this section may be made in any case where, in the opinion of the board of state prison commissioners, articles so produced or manufactured do not meet the reasonable requirements of such penal or custodial institution of the state, or in any case where the requisition made cannot be complied with on account of an insufficient supply of articles or supplies required. No such penal or custodial institution shall be allowed to evade the intent and meaning of this section by slight variations from standards adopted by the board of state prison commissioners when the articles produced or manufactured by it, in accordance with its standards, are reasonably adapted to the actual needs of such penal or custodial institution.

History: En. Sec. 8, Ch. 162, L. 1953.

94-35-152.9. Intentional violation. No voucher, certificate or warrant issued by the state, or penal or custodial institution, shall be questioned on the grounds that this section has not been complied with, but if intentional violation of this section by any penal or custodial institution continues after notice from the governor to desist, the same shall constitute a malfeasance in office and shall subject the officers responsible for this violation to suspension or removal from office, as may be provided by law in other cases of malfeasance.

History: En. Sec. 9, Ch. 162, L. 1953.

94-35-152.10. Authority to print and distribute catalogues. The board of state prison commissioners may cause to be prepared annually, at such times as it may determine, catalogues and circulars containing the description of all articles and supplies manufactured and produced by it, pursuant to the provisions of this act, copies of which catalogue or circular shall be sent by it to all penal and custodial institutions of the state.

History: En. Sec. 10, Ch. 162, L. 1953.

94-35-152.11. Penalties. Whoever sells or exposes for sale or exchange any goods, wares, or merchandise manufactured, produced, or mined wholly or in part by convicts or prisoners (except prisoners on parole or probation), in any penal or reformatory institutions, except in the methods established by this act, shall, upon conviction, be subject to a fine of three hundred

dollars (\$300.00) or imprisonment for ninety (90) days, or both, and each such sale or offer for sale or exchange shall be considered a separate offense; provided that this act shall have no application to articles and things made by an inmate for his own individual profit.

History: En. Sec. 11, Ch. 162, L. 1953.

94-35-152.12. "Open market" defined. The words "open market," as used in this act, shall mean all sales or exchange conducted or transacted through the medium of stores, shops, sales agents or agencies, whether retail or wholesale, or in any manner to the consuming public.

History: En. Sec. 12, Ch. 162, L. 1953.

94-35-152.13. Disposition of industries receipts. All receipts from the sale of the products produced or manufactured by the industries in the penal or reformatory institutions of the state shall be deposited in the state treasury to the credit of the earmarked revenue fund and shall be available for capital outlay for industrial purposes or maintenance, operation and recurrent expenses of the industries above described.

History: En. Sec. 13, Ch. 162, L. 1953;
amd. Sec. 229, Ch. 147, L. 1963.

Amendment

The 1963 amendment combined the first two sentences into one by substituting "the earmarked revenue fund and" for "a special fund to be designated 'industrial revolving fund.' Said fund"; and deleted a

final sentence which read, "At the beginning of each fiscal year the maximum amount of such revolving fund shall not exceed an amount equivalent to fifty per cent (50%) of the total sales from all industries for the preceding fiscal year and any excess shall be transferred to the state general fund."

94-35-152.14. Interstate sale or exchange between penal institutions prohibited. The exchange of the products of penal or reformatory institutions of this state, as specified in this act, for the products of any other state is hereby prohibited.

History: En. Sec. 14, Ch. 162, L. 1953.

94-35-152.15. Manufacture of license plates by penal institutions not prohibited—sale of surplus raised exclusively for inmates not prohibited. Nothing contained herein shall be deemed to prevent any of the said institutions from manufacturing motor vehicle number plates, and other articles required or needed by the office of the registrar of motor vehicles, or metal highway marking signs required by the state highway department, or from preventing any of said institutions selling or disposing of any reasonable surplus of produce raised exclusively for the use, feeding or maintenance of the inmates of any of said institutions.

History: En. Sec. 15, Ch. 162, L. 1953.

94-35-152.16. Repair and maintenance of property of penal and custodial institutions by inmates not prohibited. Nothing contained herein shall be deemed to prevent the repair and maintenance of all property and equipment of all custodial and penal institutions by the inmates of those institutions, nor shall it be deemed to prevent the repair and maintenance in any of the penal or custodial institutions of the state of furniture and equipment of any other institution of the state.

History: En. Sec. 16, Ch. 162, L. 1953.

94-35-152.17. Board to provide for repair and maintenance work. The board of state prison commissioners is hereby authorized and directed to make rules and regulations for the purpose of establishing facilities and programs in the penal and reformative institutions of the state which will enable the said institutions to carry out as much of the repair and maintenance work as the nature of the penal and reformative institutions will permit.

History: En. Sec. 17, Ch. 162, L. 1953.

94-35-152.18. Institutions subject to act. "Penal and custodial institutions of the state" as used in this act shall mean the following: the state penitentiary at Deer Lodge; the state tuberculosis sanitarium at Galen; Montana state hospital at Warm Springs; the soldiers' home at Columbia Falls; the state orphans' home at Twin Bridges; the Montana state training school at Boulder; the Montana state school for the deaf and blind at Great Falls; the Montana state industrial school at Miles City; the state vocational school for girls at Helena, and the state home for the aged at Lewistown.

History: En. Sec. 18, Ch. 162, L. 1953.

Repealing Clause

Section 19 of Ch. 162, Laws 1953 specifically repealed secs. 94-35-153 to 94-35-162.

Effective Date

Section 20 of Ch. 162, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 3, 1953.

94-35-153 to 94-35-162. (11573 to 11573.9) Repealed.

Repeal

These sections (Sec. 2, Ch. 32, Laws 1911; Secs. 1 to 9, Ch. 172, Laws 1933; amd. Sec. 1, Ch. 9, Ex. L. 1933), relating

to prison-made goods, were repealed by Sec. 19, Ch. 162, Laws 1953 effective March 3, 1953. For present law, see secs. 94-35-152.1 to 94-35-152.18.

94-35-167. (11231) Public nuisances defined.

References

Cited or applied in State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140.

94-35-169. (10928) Public officers—resisting in the discharge, etc.

Unlawful Arrest

In action for damages for unlawful arrest which occurred after store manager handed plaintiff's check to officer and plaintiff seized check from officer's hand, arrest

could not be justified as for violation of this section since plaintiff had right to possession of the check. Harrer v. Montgomery Ward & Co., 124 M 295, 221 P 2d 428, 435.

94-35-204. (11552.1) Stolen livestock—seizure and confiscating of vehicle used to transport. The use of any vehicle for the transportation of any stolen mule, horse, mare, colt, foal, filly, sheep, lamb, cow, calf, heifer, steer, bull, hogs, poultry, or the products of either thereof, shall be unlawful and such vehicle shall be forfeited to and confiscated by the state. Any such vehicle found in such use, or upon probable cause believed to be devoted wholly or in part to such use, shall be seized and held and, upon conviction in a proceeding in the name of the state of Montana against such vehicle, or against such vehicle and the owner, before any district court or judge thereof, shall be confiscated and sold; provided that such vehicle shall not be confiscated, or subject to forfeiture, if the same be a stolen vehicle at the time it is used for such unlawful transportation and the owner thereof is not in collusion with the party or parties guilty of the theft.

History: En. Sec. 1, Ch. 80, L. 1931;
amd. Sec. 1, Ch. 132, L. 1963.

Amendment

The 1963 amendment substituted "mule, horse, mare, colt, foal, filly, sheep, lamb" for "sheep" in the first sentence.

94-35-216. (11039) Sunday—certain activities on, forbidden.

Construction of statute or ordinance prohibiting or regulating sports and games on Sunday. 24 ALR 2d 813.

94-35-221.1. Failure to relinquish party line or telephone for emergency call—penalty. Any person who fails to relinquish a telephone party line or a public pay telephone after he has been requested to do so to permit another to place an emergency call to a fire department or police department, or for medical or spiritual aid or ambulance service, is punishable by imprisonment for not more than ten (10) days or by a fine of not more than twenty-five dollars (\$25.00) or by both such imprisonment and such fine.

History: En. Sec. 1, Ch. 206, L. 1961.

Title of Act

An act relating to use of telephones, to provide a penalty for failure to relin-

quish a party line or public pay telephone in an emergency; and to provide a penalty for false representation of an emergency in order to use a party line or public pay telephone.

94-35-221.2. Lack of knowledge as defense—emergency as defense. It is a defense to prosecution under section 1 [94-35-221.1] of this act that the accused did not know or did not have reason to know of the emergency in question, or that the accused was himself using the telephone party line or public pay telephone for such an emergency call.

History: En. Sec. 2, Ch. 206, L. 1961.

94-35-221.3. False pretext of emergency—penalty. Any person who requests another to relinquish a telephone party line or a public pay telephone on the pretext that he must place an emergency call, knowing such pretext to be false, is punishable by imprisonment for not more than ten (10) days or by a fine of not more than twenty-five dollars (\$25.00) or by both such imprisonment and such fine.

History: En. Sec. 3, Ch. 206, L. 1961.

94-35-221.4. Printing of act in directories. Every telephone company doing business in this state shall print a copy of sections 1, 2 and 3 [94-35-221.1 to 94-35-221.3] of this act in each telephone directory published by it after the effective date of this act.

History: En. Sec. 4, Ch. 206, L. 1961.

94-35-258. Endurance races of horses prohibited. It shall be unlawful for any person, firm, corporation, association or organization within the state of Montana to sponsor, promote, conduct, or participate in sponsoring, promoting or conducting any horse race, commonly known as an endurance race, for a distance of more than two (2) miles.

History: En. Sec. 1, Ch. 27, L. 1949.

Title of Act

An act prohibiting endurance races of

more than two miles; providing a penalty; and repealing all acts in conflict.

Animals⁴⁰.
3 C.J.S. Animals § 70.

94-35-259. Penalty for running endurance horse race. Any person, firm, corporation, association, or organization violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than two hundred fifty dollars (\$250.00) or more than five hundred dollars (\$500.00) or by imprisonment in the county jail of not less than ninety [90] days or more than one [1] year.

History: En. Sec. 2, Ch. 27, L. 1949.

all acts and parts of acts in conflict therewith.

Repealing Clause

Section 3 of Ch. 27, Laws 1949 repealed

Animals ~~41~~.

3 C.J.S. Animals § 75.

94-35-260. State tax stamps—failure to affix or cancel—removal—penalty—counterfeiting tax stamp or insignia of Montana or other state—penalty. (a) Every person required by law to affix any tax stamp or insignia of the state of Montana, to or upon any article to evidence the payment of a tax or license thereon, who shall fail, neglect or refuse to affix such stamp or insignia thereto, or to affix it in the proper place, or to cancel it, in the manner and as required by law, or as required by rules and regulations of the state board of equalization of this state when charged with administering any act relating thereto, or who shall wilfully remove any such affixed stamp or insignia from any such article and affix it to another such article required by law to be so stamped or marked, is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not less than thirty (30) days, nor more than six (6) months, or by a fine of not less than one hundred dollars (\$100.00), nor more than three hundred dollars (\$300.00), or by both such fine and imprisonment.

(b) Every person without authority of law, who shall wilfully make, print, manufacture, counterfeit, or attempt to make, print, manufacture or counterfeit any such stamp or insignia of the state of Montana or of any other state, or who shall, without authority of law, have in his possession any such counterfeit stamp or insignia, die, equipment or material for the making, printing, manufacturing or counterfeiting of any such stamp or insignia, or who shall be concerned therewith, is guilty of a felony and shall be punished by imprisonment in the state prison not less than one (1) year, nor more than five (5) years, or by a fine of not less than one thousand dollars (\$1,000.00), nor more than five thousand dollars (\$5,000.00), or by both such fine and imprisonment.

History: En. Sec. 1, Ch. 43, L. 1949.

Title of Act

An act relating to tax stamps or insignia of the state of Montana; providing penalty for counterfeiting any such stamp or insignia, or having possession thereof, or being concerned therewith; prescribing penalty for re-using any such stamp or insignia, and for failure or refusal to properly affix any such stamp or insignia, or to properly cancel any such stamp.

Repealing Clause

Section 2 of Ch. 43, Laws 1949 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 43, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved February 23, 1949.

Counterfeiting ~~6~~; Licenses ~~40~~.

20 C.J.S. Counterfeiting § 9; 53 C.J.S. Licenses § 66.

94-35-261. Importing or selling farm machinery with altered, defaced or removed serial number. No person, firm or corporation shall import, or

cause to be imported into the state of Montana any tractor, forage blower, combine, thresher, forage harvester, hay baler, power mower or any other item of heavy farm machinery on which the serial numbers have been destroyed, removed, altered, covered or defaced; nor transport, sell, offer for sale or otherwise dispose of any such farm implements or machinery within the state of Montana knowing the same to have been imported in violation of this act.

History: En. Sec. 1, Ch. 167, L. 1953.

Title of Act

An act prohibiting the importation into Montana of farm implements or machinery on which the serial numbers have been destroyed, removed, altered, covered or defaced; prohibiting the destruction, removal, alteration, covering or defacing

of the serial numbers on farm implements or machinery; prohibiting the transportation or offering for sale, selling or otherwise disposing of farm implements or machinery knowing the same to have been imported into Montana in violation of this act and providing penalties for the violating hereof.

94-35-262. Altering, defacing or removing serial number on farm machinery. No person, firm, association or corporation shall destroy, remove, alter, cover, or deface the manufacturer's serial numbers from any tractor, forage blower, combine, thresher, forage harvester, hay baler, power mower or any other item of heavy farm machinery having such numbers.

History: En. Sec. 2, Ch. 167, L. 1953.

94-35-263. Penalty. Any wilful violation of any of the provisions of this act shall constitute a misdemeanor.

History: En. Sec. 3, Ch. 167, L. 1953.

94-35-264. Furnishing certain articles to prisoners in state prison—receiving such articles by prisoners—felony. Any person who, without the consent of the warden, shall furnish or attempt to furnish, or aid or assist in furnishing to any prisoner committed to the state prison, any alcohol, brandy, whiskey, rum, gin, beer, ale, porter, wine, spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing one-half ($\frac{1}{2}$) of one per centum (1%) or more of alcohol by volume which are fit for use for beverage purposes, or any knives, razors, drugs, narcotics, guns, ammunition, ropes, ladders, clothing other than that issued by the state prison, or money to such prisoner; or any prisoner who, without the consent of the warden, shall receive, attempt to receive, or aid or assist in receiving or attempting to receive any of such things, shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison for a term not exceeding ten (10) years, or a fine not exceeding ten thousand dollars (\$10,000), or both.

History: En. Sec. 1, Ch. 177, L. 1953.

Title of Act

An act providing that any person who without the consent of the warden, shall furnish or attempt to furnish, or aid or assist in furnishing to any prisoner confined in the state prison, any alcohol, brandy, whiskey, rum, gin, beer, ale, porter, wine, spirituous, vinous, malt, or fermented liquor, liquids and compounds,

whether medicated, proprietary, patented or not, and by whatever name called, containing one-half ($\frac{1}{2}$) of one per centum (1%) or more of alcohol by volume which are fit for use for beverage purposes, knives, razors, drugs, narcotics, guns, ammunition, ropes, ladders, clothing, or money to such prisoner, or any prisoner who, without the consent of the warden, shall receive, attempt to receive, or aid or assist in receiving or attempting to

receive any of such things, shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison for a term not exceeding ten (10) years, or a fine not exceeding ten thousand dollars (\$10,000), or both.

Repealing Clause

Section 2 of Ch. 177, Laws 1953 re-

pealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 177, Laws 1953 provided the act should be in effect upon its passage and approval. Approved March 4, 1953.

Prisons \Rightarrow 17½.

72 C.J.S. Prisons § 22.

94-35-265. Abandoning or permitting abandoned icebox in dangerous condition—penalty. Any person, firm or corporation abandoning or discarding in any place accessible to children any refrigerator, icebox or ice chest, of a capacity of one and one-half cubic feet or more, which has an attached lid or door which may be opened or fastened shut by means of an attached latch, or who, being the owner, lessee, or manager of such place, knowingly permits such abandoned or discarded refrigerator, icebox or ice chest to remain in such condition, shall be deemed negligent as a matter of law and shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than fifty dollars (\$50.00), or imprisoned not more than thirty (30) days, or both.

History: En. Sec. 1, Ch. 126, L. 1955.

Title of Act

An act providing penalties for abandoning or discarding refrigerators, iceboxes or ice chests with attached doors or lids in places accessible to children; providing persons knowingly permitting such con-

ditions to exist to be negligent in addition to penalties and containing a repealing clause.

Repealing Clause

Section 2 of Ch. 126, Laws 1955 repealed all acts and parts of acts in conflict therewith.

94-35-266 to 94-35-268. Repealed.

Repeal

These sections (Secs. 1-3, Ch. 139, L. 1955; Sec. 1, Ch. 15, L. 1957), relating to

life saving equipment on boats, were repealed by Sec. 20, Ch. 285, Laws 1959, effective March 18, 1959.

94-35-269. Hunting in careless or reckless manner—failure to assist person injured or wounded—misdemeanor. Any person who, in the act of pursuing, taking or killing game animals or game birds, shall act in a careless or reckless manner, or with wanton disregard of human life or property, or who knowingly fails to give all reasonable assistance to any person whom he has injured or wounded, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and upon conviction thereof, be punished as provided by law.

History: En. Sec. 1, Ch. 189, L. 1955.

Title of Act

An act providing for the prosecution of

careless, reckless and negligent hunters, and for imposing of penalties upon conviction thereof.

94-35-270. Delivery of grain containing toxic chemicals to public warehouses. It shall be unlawful for any person, firm, corporation or association, to deliver to any public warehouse, any grain in bulk, if such grain contains toxic chemicals, providing such person, firm, corporation or association knew, or upon the exercise of reasonable diligence, could have known of the presence of toxic chemicals in the grain.

History: En. Sec. 1, Ch. 9, L. 1957.

Title of Act

An act making it unlawful to deliver to any public warehouse any grain in bulk containing toxic chemicals if the person, firm, corporation or association delivering

such grain knew, or by the exercise of reasonable diligence, could have known, of the presence of such toxic chemicals; providing that such delivery shall constitute a misdemeanor and providing penalties therefor; and repealing all acts and parts of acts in conflict herewith.

94-35-271. Penalty for violation. Any person, firm, corporation or association violating the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars (\$500.00) and not less than two hundred fifty dollars (\$250.00) or be imprisoned for not more than six (6) months and not less than thirty (30) days, or both.

History: En. Sec. 2, Ch. 9, L. 1957.

Repealing Clause

Section 3 of Ch. 9, Laws 1957 repealed all acts and parts of acts in conflict therewith.

94-35-271.1. Coloration of wheat, oats, rye or barley treated with injurious or toxic substances. Any wheat, oats, rye or barley treated with any injurious or toxic substance or chemical shall at the same time be colored or dyed a color contrasting with the natural color of such wheat, oats, rye or barley, so that the treated wheat, oats, rye or barley is readily identifiable as having been treated with an injurious or toxic substance or chemical.

History: En. Sec. 1, Ch. 80, L. 1959.

Title of Act

An act to provide for the coloration of wheat, oats, rye or barley when being

treated with an injurious or toxic substance or chemical, providing a penalty; and repealing all acts or parts of acts in conflict herewith.

94-35-271.2. Sale or offering for sale product in violation of act prohibited. No person, firm, corporation or association shall sell or offer for sale, any wheat, oats, rye or barley which has been treated with any injurious or toxic substance or chemical unless the wheat, oats, rye or barley has been colored or dyed a color contrasting with the natural color of the wheat, oats, rye or barley. This act shall not apply to the treatment of any wheat, oats, rye or barley which solely is for the killing of insects which might be present therein. Provided, however, that if such treatment uses any injurious or toxic substance for the killing of insects, then such grain must be colored or dyed as hereinabove provided if offered for sale.

History: En. Sec. 2, Ch. 80, L. 1959.

94-35-271.3. Violation constitutes misdemeanor. Any person, firm, corporation or association violating any of the provisions of this act shall be guilty of a misdemeanor.

History: En. Sec. 3, Ch. 80, L. 1959.

all acts and parts of acts in conflict therewith.

Repealing Clause

Section 4 of Ch. 80, Laws 1959 repealed

94-35-272. Unlawful operation, use, interference, or tampering of aircraft—penalty. Every person who shall wilfully operate or use any aircraft without the consent of the owner, or who shall wilfully interfere or tamper with any aircraft without the consent of the owner, or who shall

wilfully put into operation the engine of any aircraft without the consent of the owner, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not more than six (6) months or by a fine of not more than five hundred dollars (\$500.00) or by both such fine and imprisonment.

History: En. Sec. 1, Ch. 83, L. 1957.

Title of Act

An act making it a misdemeanor for any person to wilfully use or operate any aircraft, or wilfully interfere or tamper with any aircraft, or wilfully put into operation the engine of any aircraft, with-

out the consent of the owner; providing a penalty for such offense; and containing a repealing clause.

Repealing Clause

Section 2 of Ch. 83, Laws 1957 repealed all acts and parts of acts in conflict therewith.

94-35-273. Switch blade knives—possession, selling, using, giving, or offering for sale—penalty—collectors. Every person who carries or bears upon his person or who carries or bears within or on any motor vehicle or other means of conveyance owned or operated by him or who owns, possesses, uses, stores, gives away, sells or offers for sale, a switch blade knife shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment in the county jail for a period not exceeding six (6) months or by both such fine and imprisonment; provided, that a bona fide collector, whose collection is registered with the sheriff of the county in which said collection is located, is hereby exempted from the provisions of this act. For the purpose of this section a switch blade knife is defined as any knife which has a blade one and one-half (1½) inches long or longer, which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.

History: En. Sec. 1, Ch. 243, L. 1957.

Title of Act

An act making it a criminal offense for any person to own, possess, carry, sell or display a switch blade knife, defining a switch blade knife, making it a criminal offense and providing a punishment therefor; providing for the effective date of said act and repealing all acts and parts of acts in conflict therewith.

Repealing Clause

Section 2 of Ch. 243, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 243, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 13, 1957.

CHAPTER 36—OBSCENITY—LITERATURE—INDECENT EXPOSURE
—HOUSES OF ILL FAME—PROHIBITION OF CERTAIN
ADVERTISEMENTS

Section 94-3601. Obscene literature not to be given to or sold by minors.
94-3602. Penalty.

94-3601. (11134) Obscene literature not to be given to or sold by minors. (1) It is unlawful for any person to sell, lend, give away, distribute, resell, or redistribute, show, or have in his possession with intent to sell, give away, distribute, resell, or redistribute, or to show or advertise or otherwise offer for loan, gift, or distribution, to any minor child, under the age of eighteen (18) years, any book, pamphlet, magazine, newspaper, lewd picture, story paper, so-called comic book, or other printed, mimeographed or published matter, devoted to the publication or principally made up of criminal news, police reports, or accounts of criminal deeds, or

pictures and stories of lust or crime, or portraying sexually indecent conduct or subject-matter, or portraying the planning or committing of deeds of crime, violence, horror, brutality, immorality or vice. It shall be unlawful to exhibit upon any street or highway, or in any place within the view of any minor child under the age of eighteen (18) years, or to hire, use, employ, or permit such child to sell or give away or in any manner distribute any such book, pamphlet, magazine, lewd picture, newspaper, story paper, so-called comic book or publication or other printed, mimeographed, or published matter above described.

(2) The prohibitions and penalties imposed hereby shall not extend to publications within any constitutional guarantee of freedom of the press or freedom of religious worship, nor to publications privileged for medical instruction, privileged as official law enforcement bulletins or publications, nor to publications or reproductions of bona fide works of literature and the fine arts.

(3) No person shall, as a condition to a sale or delivery for resale of any publication not above-described or not within the purview of the foregoing section, require that the purchaser or consignee receive for resale or redistribution any other publication or article whatsoever within or reasonably believed by such purchaser or consignee to be within the purview of the foregoing section.

History: En. Secs. 1, 2, p. 255, L. 1891; amd. Sec. 560, Pen. C. 1895; re-en. Sec. 8391, Rev. C. 1907; re-en. Sec. 11134, R. C. M. 1921; amd. Sec. 1, Ch. 214, L. 1955.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

Constitutionality

Justice Frankfurter in his dissenting opinion in the Winters Case considered this to be one of the statutes throughout the country that would fall under the majority decision in that case as "void for vagueness." *Winters v. New York*, 333 U S 523, 92 L Ed 853, 68 S Ct 674.

94-3602. (11135) Penalty. (1) Every person violating any of the provisions of the next preceding section is guilty of a misdemeanor, and provided further that upon the second and each subsequent conviction thereunder, a jail sentence is mandatory.

History: En. Sec. 561, Pen. C. 1895; re-en. Sec. 8392, Rev. C. 1907; re-en. Sec. 11135, R. C. M. 1921; amd. Sec. 2, Ch. 214, L. 1955.

Amendment

The 1955 amendment added the proviso clause.

Separability Clause

Section 3 of Ch. 214, Laws 1955 read "If any clause, sentence, paragraph, section, subdivision or part of this act shall, for any reason, be adjudged by any court

of competent jurisdiction to be invalid, inoperative or unconstitutional, such decision shall not affect, impair or invalidate the remaining portions of this act, but shall be confined in its operation to the clause, sentence, paragraph, section, subdivision or part directly adjudged to be invalid, inoperative or unconstitutional."

Repealing Clause

Section 4 of Ch. 214, Laws 1955 repealed all acts or parts of acts in conflict therewith.

CHAPTER 38—PERJURY—SUBORNATION OF PERJURY

94-3801. (10878) Perjury defined.

Venue

Where prosecution for perjury is founded upon a false affidavit which was nota-

rized in Lake County and delivered to Lewis and Clark County, apparently by mail, by virtue of section 94-3809, the

crime was completed when the affidavit left the defendant with the requisite intent. If upon having the affidavit notarized the defendant then gave it to some other person to mail or mailed it himself, then the crime was committed and the

proper county for venue was Lake County and not Lewis and Clark County. *State v. Rother*, 130 M 357, 303 P 2d 393. (Dissenting opinions, 130 M 357, 303 P 2d 393, at 397 and 409.)

94-3802. (10879) Oath defined.

References

Cited or applied in *State v. Rother*, 130 M 357, 303 P 2d 393, 395.

94-3806. (10883) Irregularity in administering oath.

References

Cited or applied in *State v. Rother*, 130

M 357, 303 P 2d 393, 394; (Dissenting opinion, 130 M 357, 303 P 2d 393 at 410.)

94-3808. (10885) Knowledge of materiality of testimony not necessary.

References

Cited or applied in *State v. Rother*, 130

M 357, 303 P 2d 393 at 410 (dissenting opinion).

94-3809. (10886) Making depositions, etc., when deemed complete.

Crime—When Complete

Under this section the crime of perjury is complete when the instrument is delivered by the accused to "any other person, with the intent that it be uttered or published as true." *State v. Rother*, 130 M 357, 303 P 2d 393, 395. (Dissenting opinions, 130 M 357, 303 P 2d 393 at 397, 409.)

Venue

Where prosecution for perjury is founded upon a false affidavit which was notarized in Lake County and delivered to

Lewis and Clark County, apparently by mail, by virtue of this section the crime was completed when the affidavit left the defendant with the requisite intent. If upon having the affidavit notarized the defendant then gave it to some other person to mail or mailed it himself, then the crime was committed and the proper county for venue was Lake County and not Lewis and Clark County. *State v. Rother*, 130 M 357, 303 P 2d 393. (Dissenting opinions, 130 M 357, 303 P 2d 393 at 397, 409.)

94-3811. (10888) Punishment of perjury.

References

Cited or applied in *State v. Rother*, 130

M 357, 303 P 2d 393 at 410 (dissenting opinion).

CHAPTER 39—PUBLIC OFFICERS—OFFENSES BY

94-3908. (10828) Presenting fraudulent bills or claims for allowance, etc.

Operation and Effect

An information may be drawn consistent with section 94-1805 (obtaining money under false pretenses) which is not vulnerable to the objection that it is bad for

duplicitly for charging an offense under this section. *State v. Hale*, 129 M 449, 291 P 2d 229, 234. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236), distinguished in 135 M 449, 453, 340 P 2d 157, 160.

94-3918. (10923) Confessions obtained by duress, etc.

References

Dryman v. State, 139 M 141, 361 P 2d 959.

94-3920. (10925) Importing persons to discharge duties, etc.

Operation and Effect

This section did not change the common-law rule respecting a sheriff's liability

in damages. *Annala v. McLeod*, 122 M 498, 206 P 2d 811, 815.

CHAPTER 41—RAPE AND OTHER SEXUAL CRIMES

Section 94-4106. Lewd and lascivious acts upon children.

94-4120. Child under age of sixteen cannot be accomplice.

94-4101. (11000) Rape defined.

Evidence of Other Offenses

Where defendant was charged with attempted rape upon a female child under the age of 18 years, the admission of a transcribed statement in the form of questions by the county attorney and answers by the defendant showing that defendant had been warned about going out with girls under 18 and could have been charged with rape of a girl other than the prosecutrix, was prejudicial, was not waived by defendant's introduction of evidence to meet that of the state, and was of such nature that it could not be cured. *State v. Tiedemann*, 139 M 237, 362 P 2d 529, 532.

Federal Law as to Indians

In the prosecution of an Indian for the crime of rape committed upon a 13-year-old female Indian on a reservation, an information which failed to charge that force had been employed or that consent of the victim was lacking failed to state an offense under the federal law which adopted the state law definition of rape. *United States v. Rider*, 282 F 2d 476.

Where an Indian was charged with rape of an Indian girl under eighteen on a reservation, the indictment failed to state an offense under the federal statute (18 U. S. C. § 1153), providing that an Indian who commits rape as defined by state law shall be imprisoned at the discretion of the court, because "rape" does not include "carnal knowledge" as rape is defined in this section, and because the federal law distinguishes between rape and carnal

knowledge. *United States v. Red Wolf*, 172 F Supp 168.

Partial Repeal

Since this section is repealed by implication by Laws of 1943, Ch. 227 (10-601 et seq.), and the amendments thereof, insofar as it is in conflict with the substance and intent thereof, district criminal court was prohibited from trying child under the age of 16 years charged with rape. He was solely under the exclusive jurisdiction of the juvenile court. *State ex rel. Dahl v. District Court*, 134 M 395, 333 P 2d 495, 497, 499.

Statutory Rape

Any man who accomplishes an act of sexual intercourse with a female under the age of 18 years, when such female is not his wife, is guilty of the crime of statutory rape. The corpus delicti is sufficiently proved by the testimony of the prosecutrix that she had sexual intercourse with the accused at the time and place set forth in the information. *State v. Reid*, 127 M 552, 267 P 2d 986, 991.

References

Cited in *State v. Lawrence*, 122 M 277, 201 P 2d 756; *State v. Sauter*, 125 M 109, 232 P 2d 731, 734.

Bill of particulars to one accused of rape. 5 ALR 2d 559.

Inclusion or exclusion of day of birth in computing age of prosecutrix. 5 ALR 2d 1153.

Exclusion of women from juries in prosecutions for rape. 9 ALR 2d 661.

94-4102. (11001) When physical ability must be proved.

Partial Repeal

Laws 1943, Ch. 227 (10-601 et seq.), and the amendments thereof have repealed by implication this section and section 94-4101, insofar as they conflict with the substance and intent thereof and district

criminal court was prohibited from trying child under the age of 16 years charged with rape. He was solely under the exclusive jurisdiction of the juvenile court. *State ex rel. Dahl v. District Court*, 134 M 395, 333 P 2d 495, 497, 499.

94-4106. (11005) Lewd and lascivious acts upon children. Any person over the age of eighteen (18) years, who shall wilfully and lewdly commit any lewd and lascivious act, other than the acts constituting other crimes provided in sections 94-4101 to 94-4108, upon or with the body or any part or member thereof, of a child under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person, or of such child, shall be guilty of a felony, and shall be imprisoned in the state prison not exceeding twenty-five (25) years.

History: En. Sec. 1, Ch. 59, L. 1913; re-en. Sec. 11005, R. C. M. 1921; amd. Sec. 1, Ch. 70, L. 1935; amd. Sec. 1, Ch. 57, L. 1959.

Amendment

The 1959 amendment raised the penalty in this section from five years to twenty-five years.

Age as Defense

The portion of this section giving an exemption to prosecution to a person under the age of eighteen years is a matter of defense, and negation thereof is not a necessary part of the information. *State v. Davis*, — M —, 376 P 2d 727, 729.

Evidence of Similar Acts

Where alleged lewd and lascivious acts upon the person of a minor child below the age of 16 years were committed on or about March 19, 1955, it was improper to permit state to show similar acts to those

charged as having been committed on August 4, 1951, and in June 1951 in the State of California because of the remoteness in time. *State v. Nicks*, 134 M 341, 332 P 2d 904, 905, 77 ALR 2d 836.

Information Held Sufficient

An information under this section was sufficient although it did not allege the age of the defendant. *State v. Davis*, — M —, 376 P 2d 727, 729.

Subsequent Offense

A defendant convicted of a lewd and lascivious act upon a child under this section was properly sentenced to a term of not less than 10 years on a subsequent offense, pursuant to subd. 1 of section 94-4713, where the jury found that he had previously been convicted of lewd and lascivious acts upon a child. In re *Davis'* Petition, 139 M 622, 365 P 2d 948, 949.

94-4109. (11008) Importation and exportation of females, etc.

Constitutionality

This section (94-4109) is void since Congress has legislated upon this matter in the Mann Act (U. S. C. Tit. 18, §§ 2421-

2424). This section then, being in contravention of a valid law of the United States, is wholly void. *Ex Parte Anderson*, 125 M 331, 238 P 2d 910, 911, 912.

94-4118. (11030) Crime against nature.

Penetration by Mouth

The infamous crime against nature may be committed by penetration of the mouth. (following *State v. Hoyt Guerin*, 51 M 250, 152 P 747.) *State v. Dietz*, 135 M 496, 343 P 2d 539, 541.

stayed overnight at defendant's house on several occasions, such evidence was insufficient to sustain the conviction as it does nothing more than show opportunity on the part of defendant to have committed the crime. *State v. Gangner*, 130 M 533, 305 P 2d 338.

Where Accomplice's Testimony Insufficiently Corroborated

Where the corroborating evidence to the testimony of the accomplice showed that accomplice slept with the defendant and

References

Cited or applied in *State v. Searle*, 125 M 467, 239 P 2d 995, 996; *State v. Shambo*, 133 M 305, 322 P 2d 657.

94-4119. (11031) Penetration sufficient to complete the crime.

Operation and Effect

There must be penetration before a person can be convicted of the infamous

crime against nature. *State v. Shambo*, 133 M 305, 322 P 2d 657, 658.

94-4120. Child under age of sixteen cannot be accomplice. No child under the age of sixteen (16) years can be an accomplice to the commission or attempted commission of the infamous crime against nature.

History: En. Sec. 1, Ch. 68, L. 1951; amd. Sec. 1, Ch. 145, L. 1957.

Title of Act

An act declaring a child under the age of fourteen years incapable of being an accomplice to the infamous crime against nature.

Amendment

The 1957 amendment substituted "sixteen (16) years" for "fourteen (14) years" and inserted the words "or attempted commission."

Repealing Clauses

Section 2 of Ch. 68, Laws 1951 and Sec. 2 of Ch. 145, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 68, L. 1951 provided the act should be in effect from and after its

passage and approval. Approved February 23, 1951.

CHAPTER 42—RESCUES AND ESCAPES**94-4202. (10865) Retaking goods from custody of officer.****Unlawful Arrest**

In action for damages for unlawful arrest which occurred after store manager handed plaintiff's check to officer and plaintiff seized check from officer's hand, arrest

could not be justified as for violation of this section since officer did not have check in his possession under any process of law. *Harrer v. Montgomery Ward & Co.*, 124 M 295, 221 P 2d 428, 435.

94-4203. (10866) Escapes from state prison—punishment.**Consecutive Sentence**

An escape sentence runs consecutively and not concurrently with the original sentence. *State ex rel. Herman v. Powell*, 139 M 583, 367 P 2d 553, 557.

Parole

The granting of a parole to an escape sentence by virtue of the wording of this section did not result in a discharge of the original sentence. *State ex rel. Herman v. Powell*, 139 M 583, 367 P 2d 553, 557.

This section does not deal with paroles and therefore, does not stand for the proposition that an inmate, who has escaped from prison, must serve his entire original sentence in prison plus his escape sentence upon apprehension before being considered for parole. *State ex rel. Herman v. Powell*, 139 M 583, 367 P 2d 553, 557.

The word "discharge" as used in this section does not mean "release on parole." *State ex rel. Herman v. Powell*, 139 M 583, 367 P 2d 553, 557.

Speedy Trial upon Escape Charge

Petitioner, who was presently confined in the United States penitentiary at Leavenworth, Kansas, applied to the supreme court of Montana for writ of mandate to require the district court of Powell County, Montana, to grant him a speedy trial on an escape charge, averring that a detainer had been filed with that institution by the warden of the Montana state prison to which he had been sentenced to terms of eight years and five years to run concurrently. Since records showed that he had escaped from custody after having served one year, two months and thirteen days of his sentences and he would be returned to the state prison to complete his unexpired sentences, the application was denied by the supreme court. In *re Well's Petition*, 139 M 611, 362 P 2d 420, 421.

References

Cited or applied in *State ex rel. Ball v. Burrell*, 129 M 585, 292 P 2d 144.

CHAPTER 43—ROBBERY**94-4301. (10973) Robbery defined.****Fear**

Under this section a robbery victim is put in the fear required by section 94-4302 when he is forced to look down the barrel

of a 45-caliber automatic pistol held by a stranger whose purpose is to rob the victim. *State v. Erickson*, — M —, 375 P 2d 314, 316.

94-4302. (10974) What fear may be an element in robbery.**Presumption**

It is reasonable to presume fear where a robbery victim is forced to look down the barrel of a 45-caliber automatic pistol

held by a stranger whose purpose is to rob his victim. *State v. Erickson*, — M —, 375 P 2d 314, 316.

CHAPTER 44—SEDITION—CRIMINAL SYNDICALISM—DISPLAY OF RED FLAG—SUBVERSIVE ORGANIZATIONS

- Section 94-4411. Subversive Organization Registration Law—title of act.
 94-4412. Purpose of act.
 94-4413. Subversive organization defined.

- 94-4414. Organization subject to foreign control defined.
- 94-4415. Exceptions from definition of subversive organization.
- 94-4416. Organization pursuant to law—no exemption.
- 94-4417. Rules and regulations.
- 94-4418. Information filed with secretary of state.
- 94-4419. Amendment of charter, constitution, by-laws or other regulations—
filing with secretary of state.
- 94-4420. Change of officers or purposes—filing with secretary of state.
- 94-4421. Semiannual statement of members.
- 94-4422. Report of meetings authorizing political action.
- 94-4423. Statements filed with secretary of state are public records.
- 94-4424. Anonymous letters prohibited.
- 94-4425. Penalty of organization for violating act.
- 94-4426. Penalty of officer of organization.
- 94-4427. Penalty of member of organization.

94-4411. Subversive Organization Registration Law—title of act. This act may be cited as the "Subversive Organization Registration Law."

History: En. Sec. 1, Ch. 215, L. 1951.

Title of Act

An act providing for the registration of certain societies, corporations, associations, political parties, assemblies, and other bodies and organizations; defining "subversive organizations," and requiring such organizations to file reports, documents and information with the secretary of state,

and providing for the making of rules and regulations by the secretary of state; prohibiting the sending and delivery to non-members of letters, leaflets, and other written or printed matter, unless the same bears the name of such organization and the names and addresses of its officers; and providing penalties for violations of this act.

94-4412. Purpose of act. This act is adopted in the exercise of the police power of this state for the protection of the public peace and safety by requiring the registration of subversive organizations which are conceived and exist for the purpose of undermining and eventually destroying the democratic form of government in this state and in the United States.

History: En. Sec. 2, Ch. 215, L. 1951.

94-4413. Subversive organization defined. As used in this title, "subversive organization" means every corporation, association, society, camp, group, political party, assembly, and everybody or organization composed of two [2] or more persons or members, which comes within all or any of the following descriptions:

(a) Which directly or indirectly advocates, advises, teaches, or practices, the duty, necessity, or propriety of controlling, conducting, seizing, or overthrowing the government of the United States, of this state, or of any political subdivision thereof by force or violence;

(b) Which is subject to foreign control as defined in section 4 [94-4414] hereof.

History: En. Sec. 3, Ch. 215, L. 1951.

94-4414. Organization subject to foreign control defined. An organization is "subject to foreign control" if it comes within either of the following descriptions:

(a) It solicits or accepts financial contributions, loans, or support of any kind directly or indirectly from, or is affiliated directly or indirectly with, a foreign government or a political subdivision thereof, an agent, agency, or instrumentality of a foreign government or political subdivision

thereof, a political party in a foreign country, or an international political organization;

(b) Its policies, or any of them, are determined by or at the suggestion of, or in collaboration with, a foreign government or a political subdivision thereof, an agent, agency, or instrumentality of a foreign government or a political subdivision thereof, a political party in a foreign country, or an international political organization.

History: En. Sec. 4, Ch. 215, L. 1951.

94-4415. Exceptions from definition of subversive organization. "Subversive organization" does not include any labor union or religious, fraternal, or patriotic organizations, society, or association whose objectives and aims do not contemplate the overthrow of the government of the United States, of this state or of any political subdivision thereof by force or violence.

History: En. Sec. 5, Ch. 215, L. 1951.

94-4416. Organization pursuant to law—no exemption. This act imposes additional requirements upon corporations, associations, or organizations which are subversive organizations. Neither the fact that such a corporation, association, or organization was organized pursuant to law nor that its affairs and activities are in any respect regulated by law exempts it from complying with this title.

History: En. Sec. 6, Ch. 215, L. 1951.

94-4417. Rules and regulations. The secretary of state may adopt and promulgate such rules and regulations as may be necessary to carry out the provisions of this title, and may alter, amend, or repeal such rules and regulations.

History: En. Sec. 7, Ch. 215, L. 1951.

94-4418. Information filed with secretary of state. Every subversive organization in existence on July 1, 1951, shall within thirty (30) days after that date, and every subversive organization thereafter organized shall within ten (10) days after its organization, file with the secretary of state, on such forms and in such detail as he may prescribe, the following information and documents:

(a) A complete and detailed statement subscribed, under oath, by all of its officers, showing all of the following:

- (1) Its name and post office address;
- (2) The names and addresses of all its branches, chapters, and affiliates;
- (3) The names, nationalities, and residence addresses of its officers and members, and the qualifications required for membership in it;
- (4) The nature and extent of its existing and proposed aims, purposes, and activities;
- (5) The times and places of its meetings;
- (6) The description and location of the real property and the kind, quantity, and quality of the personal property owned by it, its assets and liabilities, the methods for the financing of its activities, and the names and addresses of all persons, organizations, and other sources who or which have contributed money, property, literature, or other things of value to

the organization or any of its branches, chapters or affiliates for any of its purposes;

(7) Such other information as the secretary of state may from time to time require.

(b) A true copy, certified by all of its officers, of all of the following:

(1) Its charter, articles of association, or constitution, and its by-laws, rules, and regulations;

(2) Its oath, affirmation, or pledge of membership, if any;

(3) Each agreement, resolution, and other instrument or document relating to its organization, powers, and purposes, and the powers and duties of its officers and members;

(4) Each book, pamphlet, leaflet, or other printed, written, or illustrated matter directly or indirectly issued or distributed by it or in its behalf, or to or by its members with its knowledge, consent, or approval;

(5) Such other documents as the secretary of state may from time to time require.

(c) A description of the uniforms, badges, insignia, or other means of identification prescribed by it, and worn or carried by its officers or members, or any of such officers or members.

(d) In case it is subject to foreign control, a statement of the manner in which it is subject.

History: En. Sec. 8, Ch. 215, L. 1951.

94-4419. Amendment of charter, constitution, by-laws or other regulations—filing with secretary of state. Every subversive organization shall within ten (10) days after any revision or amendment of, or other change with respect to, its charter, articles of association, constitution, by-laws, rules, regulations, oath, affirmation, or pledge of membership, or any part thereof, file with the secretary of state a true copy certified by all of its officers of the revised, amended, or changed charter, articles of association, constitution, by-laws, rules, regulations, oath, affirmation, or pledge of membership, or part thereof.

History: En. Sec. 9, Ch. 215, L. 1951.

94-4420. Change of officers or purposes—filing with secretary of state. Every subversive organization shall within ten (10) days after a change has been made in its officers, or in its aims, purposes, activities, property holdings, or methods and sources of financing its activities, file with the secretary of state a statement subscribed under oath by all of its officers showing the change.

History: En. Sec. 10, Ch. 215, L. 1951.

94-4421. Semiannual statement of members. Every subversive organization shall at least once in each period of six (6) months file with the secretary of state a statement subscribed under oath by all of its officers showing the names and residence addresses of all persons who have been admitted to membership during that period or, if no members have been admitted during that period, a statement to that effect similarly subscribed.

History: En. Sec. 11, Ch. 215, L. 1951.

94-4422. Report of meetings authorizing political action. Every subversive organization shall within ten (10) days after the adoption thereof

file with the secretary of state, on such form and in such detail as he may prescribe, each resolution adopted, or the minutes of any meeting held by it, authorizing or providing for concerted action by its officers, members, or a part of its membership, to promote or prevent the passage of any act of legislation by any local, state, or federal legislative body, or to support or defeat any candidate for public office.

History: En. Sec. 12, Ch. 215, L. 1951.

94-4423. Statements filed with secretary of state are public records. All statements or documents filed with the secretary of state under this title [94-4411 to 94-4427] are public records and shall be open to public examination and inspection at all reasonable hours.

History: En. Sec. 13, Ch. 215, L. 1951.

94-4424. Anonymous letters prohibited. A subversive organization shall not send, deliver, mail or transmit, or suffer or permit to be sent, delivered, mailed, or transmitted, to any person in this state who is not a member of the organization any anonymous letter, document, leaflet, or other written or printed matter. All letters, documents, leaflets, or other written or printed matter issued by a subversive organization which are intended to come to the attention of a person who is not a member of the organization shall bear the name of the organization and the name and residences of its officers.

History: En. Sec. 14, Ch. 215, L. 1951.

94-4425. Penalty of organization for violating act. Any subversive organization which violates any provisions of this title [94-4411 to 94-4427] is guilty of a felony punishable by fine of not less than one thousand dollars (\$1,000.00) nor more than ten thousand dollars (\$10,000.00). Any such violation constitutes a separate and distinct offense for each day, or part thereof, during which it is continued.

History: En. Sec. 15, Ch. 215, L. 1951.

94-4426. Penalty of officer of organization. Any officer or member of the board of directors, board of trustees, executive committee, or other similar governing body of a subversive organization who violates any provision of this title [94-4411 to 94-4427], or permits or acquiesces in the violation of any provision of this title by the organization is guilty of a felony punishable by fine of not less than five hundred dollars (\$500.00) nor more than five thousand dollars (\$5,000.00), or by imprisonment in a state prison for not less than six (6) months nor more than five (5) years, or by both.

History: En. Sec. 16, Ch. 215, L. 1951.

94-4427. Penalty of member of organization. Any person who becomes or remains a member of any subversive organization, or attends a meeting thereof, with knowledge that the organization has failed to comply with any provision of this title [94-4411 to 94-4427], is guilty of a misdemeanor punishable by fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00), or by imprisonment in the county jail for not less than ten (10) days nor more than one (1) year, or by both.

History: En. Sec. 17, Ch. 215, L. 1951.

Separability of Provisions

Section 18 of Ch. 215, L. 1951 read, "If any provision of this act or the application thereof to any person, corporation, association, organization, or circumstances, is for any reason held invalid, ineffective, or unconstitutional by a court of competent jurisdiction, the remainder of this act, or

the application of such provision to other persons, corporations, associations, organizations, or circumstances, shall not be affected thereby, and the legislative assembly hereby declares the severability of the several sections and provisions of this act, and that it would have enacted the same without the invalid provisions or the invalid applications, as the case may be, had such invalidity been apparent."

CHAPTER 47—PUNISHMENTS—ATTEMPTS AND OTHER GENERAL PROVISIONS

Section 94-4716.1. Commencement of term for offense committed by prisoner under sentence.

94-4720. Civil rights of convict suspended.

94-4701. (11581) Acts made punishable by different provisions, etc.

Proof of Previous Conviction

A prior foreign conviction must be charged and proved before the court is

bound to fix a minimum penalty based thereon. *State v. Brown*, 136 M 382, 351 P 2d 219, 222.

94-4708. (11588) Removal from office for neglect of official duty.

Operation and Effect

This section does not restrain or limit the power of the governor to remove the third member of the unemployment com-

pensation commission. *State ex rel. Bonner v. District Court*, 122 M 464, 206 P 2d 166, 171.

94-4710. (11590) Attempts to commit crime, when punishable.

References

Cited or applied in *State v. Quinlan*, 126 M 52, 244 P 2d 1058, 1061 (dis-

senting opinion); *State v. Shambo*, 133 M 305, 322 P 2d 657, 658.

94-4711. (11591) Attempts to commit crime, how punishable.

References

Cited or applied in *State v. Dietz*, 135 M 496, 343 P 2d 539, 540.

94-4713. (11593) Second offense, how punished after conviction, etc.

Identity of Person under Prior Conviction

Before a person can be convicted of the former convictions there must be proof aside from the judgment of prior convictions that the person convicted was in fact the defendant. *State v. Nelson*, 130 M 466, 304 P 2d 1110, 1115.

Pleading of Prior Conviction

When a prior conviction is set forth in the information it does not constitute a second prosecution for a public offense for which defendant has once been prosecuted. In *re Bean's Petition*, 139 M 625, 365 P 2d 936, 937.

Lewd and Lascivious Act upon a Child

Defendant convicted of a lewd and lascivious act upon a child under section 94-4106, which carried a penalty of imprisonment not exceeding 25 years, was properly sentenced to a term of not less than 10 years on a subsequent offense, pursuant to subd. 1 of this section, where the jury found that he had previously been convicted of lewd and lascivious acts upon a child. In *re Davis' Petition*, 139 M 622, 365 P 2d 948, 949.

Proof of Nature of Crime

When a judgment of prior conviction is offered as evidence the state must prove that the crime involved was a felony within the meaning of this section. *State v. Nelson*, 130 M 466, 304 P 2d 1110, 1115.

Proof of Previous Conviction

A prior foreign conviction must be charged and proved before the court is bound to fix a minimum penalty based thereon. *State v. Brown*, 136 M 382, 351 P 2d 219, 222.

References

Cited or applied in *State v. Dietz*, 135 M 496, 343 P 2d 539, 540; *State ex rel.*

Nelson v. Ellsworth, — M —, 375 P 2d 316, 318.

94-4715. (11595) Foreign conviction for former offense.**Identity of Person under Prior Conviction**

Before a person can be convicted of the former convictions there must be proof aside from the judgment of prior convictions that the person convicted was in fact the defendant. *State v. Nelson*, 130 M 466, 304 P 2d 1110, 1115.

charged and proved before the court is bound to fix a minimum penalty based thereon. *State v. Brown*, 136 M 382, 351 P 2d 219, 222.

Proof of Nature of Crime

When a judgment of prior conviction is offered as evidence the state must prove that the crime involved was a felony within the meaning of this section. *State v. Nelson*, 130 M 466, 304 P 2d 1110, 1115.

Proof of Conviction

A prior foreign conviction must be

94-4716.1. Commencement of term for offense committed by prisoner under sentence. The term of imprisonment fixed by judgment in a criminal action for a felony perpetrated by a person who was then under sentence of commitment to the state prison and while confined at such prison or while being conveyed to or from said prison or while awaiting conveyance or transfer to said prison or while unlawfully absent from said prison, shall commence at the termination of the term of imprisonment for which said person was then committed or under sentence at the time said subsequent offense was committed.

History: En. Sec. 1, Ch. 130, L. 1961.

of commitment to the state prison; and to provide for an effective date.

Title of Act

An act providing for the time of commencement of term of imprisonment in the state prison fixed by judgment rendered when person then under sentence

Effective Date

Section 2 of Ch. 130, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 2, 1961.

94-4717. (11597) When term of imprisonment commences, etc.**Second Conviction**

Relator was convicted of the crime of burglary in the first degree. After serving one year and six days he was released from prison pending appeal. The conviction was reversed upon such appeal and a new trial ordered. Upon the new trial he was

again convicted and sentenced for the same period as the first, ten years. During his second incarceration he was not entitled to credit against the second sentence for time served under the first sentence. *State ex rel. Nelson v. Ellsworth*, — M —, 375 P 2d 316, 318.

94-4720. (11600) Civil rights of convict suspended. A sentence of imprisonment in the state prison for any term less than life suspends all the civil rights of the person so sentenced, and forfeits all public offices and private trusts, authority, or power, during such imprisonment. The governor has power to restore to citizenship any person convicted of any offense committed against the laws of the state, upon cause being shown, either after the expiration of sentence, or after pardon. The governor may request an investigation by the board of pardons to determine if such restoration to citizenship be advisable.

History: En. Sec. 154, p. 217, *Bannack Stat.*; re-en. Sec. 186, p. 313, *Cod. Stat.* 1871; re-en. Sec. 213, 4th Div. *Rev. Stat.* 1879; re-en. Sec. 279, 4th Div. *Comp. Stat.*

1887; amd. Sec. 1239, *Pen. C.* 1895; re-en. Sec. 8904, *Rev. C.* 1907; re-en. Sec. 11600, *R. C. M.* 1921; amd. Sec. 1, Ch. 87, L. 1955. *Cal. Pen. C. Sec.* 673.

Amendment

The 1955 amendment added the second and third sentences.

Effective Date

Section 2 of Ch. 87, Laws 1955 provided the act should be in effect from and after April 1, 1955.

94-4723. (11603) Convict competent witness.**Proper Method to Impeach**

Where a defendant upon cross-examination admits his prior convictions of felonies it is error for the court to then allow the state to introduce into evidence the judgment record of prior convictions, for

it serves no useful purpose since the credibility has already been impeached and it may weigh too heavily against the defendant. *State v. Coloff*, 125 M 31, 231 P 2d 343, 344.

CHAPTER 48—RIGHTS OF DEFENDANT**94-4801. (11606) No person punishable but on legal conviction.**

Duty to advise accused as to right to assistance of counsel. 3 ALR 2d 1003.

94-4804. (11609) Parties to a criminal action.**Operation and Effect**

In a criminal case the state is the opposite party to the defendant, and former section 93-1901-9, relating to calling the opposite party, is not applicable to a criminal proceeding. *State v. Moorman*, 133 M 148, 321 P 2d 236, 238.

References

Cited or applied in *State v. MacLean*, 129 M 500, 291 P 2d 250, 252.

94-4806. (11611) Rights of defendant in a criminal action.**Discharge of Court-appointed Counsel**

Where court-appointed counsel failed to advise the clerk's office as to what would be required for the record on appeal, as required by section 94-8112, from conviction of burglary and there was no record before the supreme court, defendant had been denied his right to effective representation by counsel on his appeal and the cause was remanded to the district court for revocation of appointment of present counsel and appointment of competent and effective counsel to properly prosecute the appeal. *State v. Bubnash*, 139 M 517, 366 P 2d 155, 158.

Where defendant charged with burglary was granted the services of court-appointed counsel he did not have the right to discharge such counsel unless he was able to provide counsel at his own expense or desired to undertake his own defense. However, upon a proper showing, such counsel could be discharged by the trial court. *Peters v. State*, 139 M 634, 366 P 2d 158, 159.

Examination of Witnesses in Open Court

Where defendant pleaded guilty to grand larceny, the extent of his punishment should have been determined under section 94-2706 by the exercise of a sound discretion on the part of the trial judge after the circumstances had been "presented by the testimony of witnesses

examined in open court" specifically provided for in sections 94-7813 and 94-7814 subject to the provisions of section 94-7831. *Kuhl v. District Court*, 139 M 536, 366 P 2d 347, 362.

Impartial Jury

Trial court was in error for refusing to grant the defendant a change of venue where evidence disclosed that local newspaper had fanned the feeling of the community against the defendant, that the local people believed the defendant to be guilty, and that the county officials themselves felt that the feeling against the defendant was so high that they moved him for safety to the state prison. *State v. Dryman*, 127 M 579, 269 P 2d 796, 800. (Dissenting opinion, 127 M 579, 269 P 2d 796, 801.)

Right to Appear and Defend by Counsel

By section 94-6512 a defendant is guaranteed counsel by appointment of the court, if he cannot himself employ an attorney. It is equally the duty of the court to make the appointment of counsel effective, i. e., to give court-appointed counsel a reasonable time for the preparation of his case after he has been appointed. *State v. Blakeslee*, 131 M 47, 306 P 2d 1103, 1107. (Dissenting opinion, 131 M 47, 306 P 2d 1103, 1107.)

Where counsel was appointed by the court, after withdrawal of defendant's original counsel, but trial was commenced three days after such appointment, such appointment was made purposeless as it is the duty of the court to make the ap-

pointment effective by giving a reasonable time for the preparation of the case. *State v. Blakeslee*, 131 M 47, 306 P 2d 1103, 1107. (Dissenting opinion, 131 M 47, 306 P 2d 1103, 1107.)

94-4807. (11612) Second prosecution for the same offense, etc.

Pleading of Prior Conviction

When a prior conviction is set forth in the information it does not constitute a second prosecution for a public offense

for which defendant has once been prosecuted. In *re Bean's Petition*, 139 M 625, 365 P 2d 936, 937.

CHAPTER 49—DEFINITIONS—PROSECUTION OF CRIMINAL ACTIONS —JURISDICTION OF COURTS

94-4905. (11619) Who are magistrates.

References

Cited in *State ex rel. Harrison v. District Court*, 135 M 365, 340 P 544, 547.

94-4910. (11624) Leave to file information.

Sufficiency of Facts in Information

Where the motion for leave to file the information disclosed that decedent was shot at close range with a high powered rifle and killed on defendant's farm, that the coroner's jury verdict was that the killing was intentional, that evidence of the commission of the crime and guilt of the

defendant was introduced at a habeas corpus hearing, that the county attorney had made a complete investigation, and that as a result he believed the defendant was guilty, the motion was sufficient to grant leave to file information. *State v. London*, 131 M 410, 310 P 2d 571, 581.

94-4911. (11625) Order of court granting.

Discretion of Court

Under this section the court may grant leave or require examination, and the latter presupposes the right to grant or deny the application on examination; but the statute does not provide for findings of fact and conclusions of law. The section contemplates a requirement of sufficient evidence to move the court's discretion, but does not contemplate an unlimited discretion with finality of decision that dis-

charges or excuses a defendant from any further proceedings. *State ex rel. Harrison v. District Court*, 135 M 365, 340 P 2d 544.

Examination before Leave to File

Where a district judge assumed to act upon an application for leave to file an information, he should have directed an examination before himself as magistrate or some other magistrate. *State ex rel. Harrison v. District Court*, 135 M 365, 340 P 2d 544.

94-4916. (11630) Jurisdiction of justices of the peace.

Compiler's Note

The reference to section 94-1307 in this section should read section 94-603.

References

Cited in *State v. Holt*, 121 M 459, 194 P 2d 651, 662; *State ex rel. Borberg v. District Court*, 125 M 481, 240 P 2d 854, 856.

CHAPTER 53—SUPPRESSION OF RIOTS

94-5304. (11658) Magistrates and officers to command rioters to disperse.

Liability of Sheriff

This section is merely declaratory of the common law and the sheriff is not liable

in damages for damage caused by mob violence. *Annala v. McLeod*, 122 M 498, 206 P 2d 811, 815.

94-5305. (11659) To arrest rioters if they do not disperse.**Liability of Sheriff**

This section is merely declaratory of the common law and the sheriff is not

liable in damages for damage caused by mob violence. *Annala v. McLeod*, 122 M 498, 206 P 2d 811, 815.

94-5314. Liability of officers for neglect of duties, etc.**Liability of Sheriff**

There was no provision imposing liability for damages upon the sheriff prior to

the enactment of this law. *Annala v. McLeod*, 122 M 498, 206 P 2d 811, 815.

CHAPTER 55—REMOVAL OF OFFICERS OTHERWISE THAN BY IMPEACHMENT

94-5501. (11687) Officers subject to removal.**Operation and Effect**

These sections do not restrain or limit the governor's power of removal of the third member on the unemployment compensation commission. *State ex rel. Bonner v. District Court*, 122 M 464, 206 P 2d 166, 171.

Removal of Clerk of School District

A clerk of a school district board of trustees may be removed without notice and hearing since he is not a public officer. *State ex rel. Running v. Jacobson*, — M —, 370 P 2d 483, 486.

94-5516. (11702) Removal of public officers by summary proceedings.**Operation and Effect**

Under this section of the Code it is the public policy of the state, in cases where a county officer is charged with collecting illegal fees, that such officer be entitled, as a matter of defense, to offer evidence of his good faith or honest mistake and the value received by the county. *State v. Hale*, 126 M 326, 249 P 2d 495, 496.

of party to appear the first day should be excluded and the last day included. *State ex rel. Burns v. School Dist.*, 129 M 243, 284 P 2d 998, 1005, overruling *State ex rel. Sullivan v. District Court*, 122 M 1, 196 P 2d 452, 455.

References

Cited or applied in *State ex rel. Olsen v. Public Service Comm.*, 131 M 104, 308 P 2d 633, 639.

Time for Appearance of Party

In computing time for citing by court

CHAPTER 56—LOCAL JURISDICTION OF PUBLIC OFFENSES

94-5601. (11703) Jurisdiction of offenses committed in this state.**Forgery**

State court had jurisdiction of prosecution for forgery of check under section 94-2007 allegedly committed by enrolled member of Indian tribe, although check was obtained from Indian agency office, where check was cashed in a town outside of the boundaries of the Indian reservation. *Petition of Fox*, — M —, 376 P 2d 726, 727.

over Indian wards for crimes committed by them within the state but without the bounds of "Indian country." *Buckman v. State*, 139 M 630, 366 P 2d 346; *In re Diserly's Petition*, — M —, 370 P 2d 763.

Tribal Indians

Crimes committed by Indians within Montana, but without the bounds of "Indian Country" are within the jurisdiction of the state courts. *Petition of Fox*, — M —, 376 P 2d 726, 727.

Indian Wards

The state of Montana has jurisdiction

94-5602. (11704) Offenses commenced without, but consummated, etc.**References**

Cited or applied in *State v. Rother*, 130

M 357, 303 P 2d 393 at 412 (dissenting opinion).

94-5605. (11707) Offense committed partly in one county and partly, etc.**References**

Cited or applied in *State v. Rother*, 130

M 357, 303 P 2d 393 at 407 (dissenting opinion).

CHAPTER 57—TIME OF COMMENCING CRIMINAL ACTIONS

94-5703. (11724) Limitation of one year in misdemeanors.**References**

Cited in *State v. Saginaw*, 124 M 225,
220 P 2d 1021, 1025.

CHAPTER 59—WARRANT OF ARREST—PROCEEDINGS
ON EXECUTION THEREOF**94-5904. (11736) To what peace officers warrants are to be directed.****Operation and Effect**

The sheriff of Flathead County has authority to arrest person in Powell County under warrant issued in Flathead County upon such person's release from prison. Application of Campeau, 122 M 375, 209 P 2d 1012, 1013.

References

Cited or applied in *State v. MacLean*, 129 M 500, 291 P 2d 250, 252.

94-5905. (11737) To what peace officers warrants are to be directed, etc.**References**

Cited or applied in *In re Malone*, 130 M 622, 299 P 2d 455.

94-5912. (11744) No delay in taking defendant before magistrate.**Availability of Magistrate**

In an action for false imprisonment brought by the plaintiff against a sheriff and surety on his official bond based on unnecessary delay in taking plaintiff before a magistrate, it was necessary for the plaintiff to prove that a magistrate was available on the particular day when the false imprisonment allegedly occurred. *Rounds v. Bucher*, 137 M 39, 349 P 2d 1026.

Unlawful Detention

Defendant convicted of the crime of uttering and delivering a fictitious check was not entitled to a reversal of his conviction because he was detained for a period of 21 days without being taken before a magistrate where there was no confession and the detention did not prejudice him in presenting his defense on the merits at the trial. *State v. Johnston*, — M —, 367 P 2d 891, 892.

CHAPTER 60—ARRESTS—BY WHOM AND HOW MADE—CLOSE
PURSUIT—RETAKING AFTER ESCAPE**Section 94-6029. Definition.**

94-6030. Authority to establish roadblocks.

94-6031. Minimum requirements.

94-6032. Existing law preserved.

94-6033. Penalty.

94-6001. (11751) Arrest defined—by whom made.**References**

City of Bozeman v. Ramsey, 139 M 148,
362 P 2d 206, 216.

94-6002. (11752) How an arrest is made and what restraint, etc.**References**

City of Bozeman v. Ramsey, 139 M 148,
362 P 2d 206, 216.

94-6003. (11753) Arrests by peace officers.**Jurisdiction of Police Court**

City police court had jurisdiction of defendant, arrested by a city police officer

without a warrant, while driving on city streets, and promptly taken to the city police court where the arresting officer

reported and charged defendant with operating a motor vehicle within the corporate limits of the city while under the influence of intoxicating liquor, in violation of city ordinance. *City of Bozeman v. Ramsey*, 139 M 148, 362 P 2d 206, 215.

Subsequent to Confession

Where defendant was requested to go to the sheriff's office for questioning and was not arrested until after his confession was given, the arrest without a warrant subsequent to the confession was a proper one within this section. *State v. Nelson*, 139 M 180, 362 P 2d 224, 229.

94-6005. (11755) Magistrate may order arrest.

References

Cited or applied in *State v. MacLean*, 129 M 500, 291 P 2d 250, 252.

94-6006. (11756) Person making arrest may summon assistance.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 216.

94-6009. (11759) Warrant must be shown, when.

References

Cited in *Application of Campeau*, 122 M 375, 209 P 2d 1012, 1013.

94-6016. (11766) Person arrested without a warrant to be taken before, etc.

Arrest Subsequent to Confession

Where defendant was requested to go to the sheriff's office for questioning and was not arrested until after his confession was given, the arrest without a warrant subsequent to the confession was proper under section 94-6003. *State v. Nelson*, 139 M 180, 362 P 2d 224, 229.

Jurisdiction of Police Court

City police court had jurisdiction of defendant, arrested by a city police officer without a warrant, while driving on city streets, and promptly taken to the city police court where the arresting officer reported and charged defendant with operating a motor vehicle within the corporate limits of the city while under the influence of intoxicating liquor, in violation of city ordinance. *City of Bozeman v. Ramsey*, 139 M 148, 362 P 2d 206, 215.

Purpose

The purpose of this statute is to insure that the person arrested is advised of the charge made against him in order to enable him to prepare a defense, and to protect him from being held incommunicado for protracted periods of time. *State v. Nelson*, 139 M 180, 362 P 2d 224, 229.

Unlawful Arrest

In action for damages for unlawful arrest which occurred after store manager handed plaintiff's check to officer and plaintiff seized check from officer's hand, arrest could not be justified by alleging a violation of sections 94-35-169 and 94-4202. *Harrer v. Montgomery Ward & Co*, 124 M 295, 221 P 2d 428, 435.

References

Cited or applied in *State v. Storm*, 124 M 102, 220 P 2d 674, 677; *State v. MacLean*, 129 M 500, 291 P 2d 250, 252.

Unlawful Detention

Defendant convicted of the crime of uttering and delivering a fictitious check was not entitled to a reversal of his conviction because he was detained for a period of 21 days without being taken before a magistrate where there was no confession and the detention did not prejudice him in presenting his defense on the merits at the trial. *State v. Johnston*, — M —, 367 P 2d 891, 892.

What Does Not Constitute Unnecessary Delay

Defendant's confession was not rendered inadmissible by reason of delay in taking him before a magistrate where he was requested at 8:55 p. m., Friday, November 7, 1958, to come voluntarily to jail for questioning; shortly after questioning by sheriff at about 10:00 p. m. he made an oral statement and at 11:50 p. m. wrote and signed a confession, witnessed by sheriff and one of his deputies; he was booked at 12:07 a. m., Saturday, November 8; at 10:40 a. m. on Saturday a statement was taken from defendant in the county attorney's office in the presence of the sheriff and deputy county attorney; and at 11:45 a. m., Saturday, November

S, defendant was brought before the magistrate in the courthouse. *State v. Nelson*, 139 M 180, 362 P 2d 224, 229, 230.

References

Cited or applied in *State v. MacLean*, 129 M 500, 291 P 2d 250, 252.

94-6017. (11767) Arrest by telegraph.

References

Cited in *Application of Campeau*, 122 M 375, 209 P 2d 1012, 1013.

94-6029. Definition. For the purpose of this act, a "temporary roadblock" means any structure, device, or means used by the duly elected or appointed law-enforcement officers of this state, and their deputies, for the purpose of controlling all traffic through a point on the highway whereby all vehicles may be slowed or stopped.

History: En. Sec. 1, Ch. 60, L. 1959.

Title of Act

An act authorizing the establishment of temporary roadblocks on the highways of the state of Montana to identify drivers and apprehend law violators; by defining

a temporary roadblock and the purpose for which it may be used; by providing minimum requirements in establishing temporary roadblocks and other matters properly relating thereto; by fixing penalty for violation of act; by repealing all acts or parts of acts in conflict herewith.

94-6030. Authority to establish roadblocks. The duly elected or appointed law-enforcement officers of this state, and their deputies, are hereby authorized to establish, in their respective jurisdictions, or in other jurisdictions within the state, temporary roadblocks on the highways of this state for the purpose of identifying drivers, and apprehending persons wanted for violation of the laws of this state, or of any other state, or of the United States, who are using the highways of this state.

History: En. Sec. 2, Ch. 60, L. 1959.

94-6031. Minimum requirements. For the purpose of warning and protecting the traveling public, the minimum requirements to be met by such officers establishing temporary roadblocks, if time and circumstances allow, are:

1. The temporary roadblock must be established at a point on the highway clearly visible at a distance of not less than one hundred (100) yards, in either direction.

2. At the point of the temporary roadblock, a sign shall be placed on the center line of the highway displaying the word "stop" in letters of sufficient size and luminosity to be readable at a distance of not less than fifty (50) yards, in both directions, either in daytime or darkness.

3. At the same point of the temporary roadblock, at least one red light, which shall be a flashing or intermittent beam of light, must be placed at the side of the roadway clearly visible to the oncoming traffic, at a distance of not less than one hundred (100) yards.

4. At a distance of not less than two hundred (200) yards from the point of the temporary roadblock, warning signs must be placed at the side of the highway, containing any wording of sufficient size and luminosity, to warn the oncoming traffic that a "police stop" lies ahead. A burning beam light, flare, or a lantern must be placed near such signs for the purpose of attracting the attention of approaching drivers during hours

of darkness. A red flag may be used for the same purpose during daylight hours.

History: En. Sec. 3, Ch. 60, L. 1959.

94-6032. Existing law preserved. Nothing in this act shall be deemed to limit, or encroach upon the existing authority of Montana law-enforcement officers in the performance of their duties involving traffic control.

History: En. Sec. 4, Ch. 60, L. 1959.

94-6033. Penalty. Any person who shall proceed or travel through a roadblock without subjecting himself to the traffic control so established shall be guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars (\$500.00), or by imprisonment in the county jail for not more than six (6) months, or by both fine and imprisonment.

History: En. Sec. 5, Ch. 60, L. 1959.

all acts or parts of acts in conflict therewith.

Repealing Clause

Section 6 of Ch. 60, Laws 1959 repealed

CHAPTER 61—EXAMINATION AND COMMITMENT OR DISCHARGE OF DEFENDANT

94-6101. (11773) Magistrate to inform the defendant of the charge, etc.

Duty to advise accused as to right to assistance of counsel. 3 ALR 2d 1003.

94-6116. (11788) Order for bail on commitment.

Discharge, suspension, or remission of bail by reason of imprisonment of principal for a different offense. 4 ALR 2d 440.

CHAPTER 62—PRELIMINARY PROVISIONS—FILING THE INFORMATION

94-6201. (11798) Offenses, how prosecuted.

References

Cited or applied in State ex rel. Bor-

berg v. District Court, 125 M 481, 240 P 2d 854, 860.

94-6206. (11803) Duty of court when county attorney does not file, etc.

References

Cited or applied in State ex rel. Bor-

berg v. District Court, 125 M 481, 240 P 2d 854, 860.

94-6207. (11804) Information may be amended.

Operation and Effect

Where court allowed state to amend information charging defendant with incest by changing "fornication" to "adultery" there was no substantial change in the charge and only touched a matter of form. Whether the defendant was married or unmarried at the time is not a material ingredient of the offense. In either event the defendant is guilty, if the intercourse charged is proved. State v. Kuntz, 130 M 126, 295 P 2d 707, 710.

made does not affect the sufficiency of the information, if the same was sufficient before the addition was made. State v. Davis, — M —, 376 P 2d 727, 729.

Waiver of Objection

Where, after plea of not guilty, county attorney asked permission to amend information and counsel for defendant stated there was no objection, any objection to the amendment of the information to include a prior conviction was waived. State ex rel. Treat v. District Court, 122 M 249, 200 P 2d 248.

Sufficiency of Information

The fact that an amendment was in fact

94-6208. (11805) Indorsement on information.**Application**

The reason for the statutory requirement that the names of witnesses be indorsed on the information is to safeguard defendant against surprise and unfair advantage. There was no unfair advantage taken of defendant when the county attorney indorsed the name of a witness after impaneling a jury because he did

not know of the existence of the witness at the time when the information was filed and gave notice to the defendant's attorney at that time and offered to agree to a reasonable delay in the trial in order that the defendant could examine the witness and secure evidence to meet his testimony. *State v. Phillips*, 127 M 381, 264 P 2d 1009, 1015.

CHAPTER 63—THE GRAND JURY—ITS FORMATION—POWERS AND DUTIES—FINDING AND PRESENTING AN INDICTMENT**94-6314. (11819) Retirement of the grand jury—discharge of.****"Final Adjournment" When Court Always Open**

Although district court is always open and each term continues until succeeding term, the terms as fixed by the court limit the existence of the grand jury, the be-

ginning of each term constituting a "final adjournment" of the preceding term within the meaning of this section. *State ex rel. Adami v. Lewis and Clark County*, 124 M 282, 220 P 2d 1052.

94-6324. (11829) When and from whom they may ask advice, etc.**Special Prosecutor—Appearance Before Grand Jury**

County attorney cannot delegate to unofficial counsel his right to advise the grand jury, assist them in their investigations and examine witnesses, and an order of the district judges appointing such special prosecutor when the county attorney was present and able to act could not give such authority. *State ex rel. Porter v. District Court*, 124 M 249, 220 P 2d 1035, 1051.

The appearance of "special prosecutor" before the grand jury was ground for setting aside the indictment. *State ex rel.*

Porter v. District Court, 124 M 249, 220 P 2d 1035, distinguished in 309 P 2d 320.

The press of business in the office of district attorney does not justify the appointment of a "special prosecutor" to appear before the grand jury. *State ex rel. Porter v. District Court*, 124 M 249, 220 P 2d 1035, 1051, distinguished in 309 P 2d 320.

References

Cited or applied in *State v. Cockrell*, 131 M 254, 309 P 2d 316, 320.

94-6331. (11836) Names of witnesses inserted at foot of indictment.**Appeal After Conviction**

If person has gone to trial under indictment with witnesses names designated as Richard Roe and John Doe and convicted, the Supreme Court would be required to sustain the conviction if possible and burden would be on defendant to show prejudice. *State ex rel. Porter v. District Court*, 124 M 249, 220 P 2d 1035, 1043.

Failure to Endorse Names—Effect

Where timely motion is made before trial the statute requires the indictment to be set aside when names of witnesses are not endorsed on indictment. *State ex rel. Porter v. District Court*, 124 M 249, 220 P 2d 1035, 1043.

If there were no witnesses it was the duty of the prosecution, on objection of defendant, to so state, either by a verified pleading or under oath. *State ex rel. Porter*

v. District Court, 124 M 249, 220 P 2d 1035, 1043.

Fictitious Names

If there were witnesses identified as John Doe and Richard Roe it is indefensible for the prosecution to conceal their identity from accused merely because the prosecutor believes that a disclosure of their true names is not vital or necessary to prepare a defense. *State ex rel. Porter v. District Court*, 124 M 249, 220 P 2d 1035, 1043.

Operation and Effect

The statute requires the endorsement of names of all witnesses, not merely the names of witnesses the state believes to be important. *State ex rel. Porter v. District Court*, 124 M 249, 220 P 2d 1035, 1041.

94-6332. (11837) Indictment, how presented and filed.**References**

Cited or applied in *State ex rel. Bor-*

berg v. District Court, 125 M 481, 240 P 2d 854, 860.

94-6333. (11838) Indictment to be signed by prosecuting attorney, etc.**References**

Cited or applied in State ex rel. Porter

v. District Court, 124 M 249, 220 P 2d 1035, 1046.

94-6334. (11839) Warrant to issue.**References**

Cited in Application of Campeau, 122 M 375, 209 P 2d 1012, 1013.

CHAPTER 64—RULES OF PLEADING AND FORM OF INFORMATION AND INDICTMENT

Section 94-6407.1. Pleadings charging more than one offense—consolidation or separation for trial.

94-6401. (11841) Forms and rules of pleading.**Operation and Effect**

No section of the Criminal Code can be found directing or requiring a bill of particulars to be furnished to a defendant; therefore, no bill of particulars

may be required or ordered. State v. Bosch, 125 M 566, 242 P 2d 477, 487.

References

Cited or applied in State v. McLeod, 131 M 478, 311 P 2d 400, 406.

94-6403. (11843) Indictment or information, what to contain.**Assault in First Degree**

Contentions of defendant that trial court erred in overruling his demurrer to the amended information and in overruling his objection to the introduction of evidence and his motion to dismiss the information, were without merit, where the amended information complied with the requirements of this section and sections 94-6401, 94-6404, 94-6405 and 94-6412. State v. McLeod, 131 M 478, 311 P 2d 400, 406.

Bill of Particulars

In a criminal case no bill of particulars may be required or ordered. State v. Bosch, 125 M 566, 242 P 2d 477, 487. (This case expressly overrules any statement or holding to the contrary in State v. Gondeiro, 82 M 530, 268 P 507; State v. Shannon, 95 M 280, 26 P 2d 360; State v. Stevens, 104 M 189, 65 P 2d 612; State v. Hahn, 105 M 189, 72 P 2d 459; State v. Robinson, 109 M 322, 96 P 2d 265, and any other such statements or holdings by this court.)

Common Understanding Rule

The test of the sufficiency of an information is: would a person of common understanding know what is intended to be charged? State v. Board, 135 M 139, 337 P 2d 924.

Lewd and Lascivious Act on Child

An information under section 94-4106 for committing a lewd and lascivious act on a child was sufficient although it did not allege the age of the defendant. State v. Davis, — M —, 376 P 2d 727, 729.

References

Cited or applied in State v. Tursich, 127 M 504, 267 P 2d 641, 643; State v. Duncan, 130 M 562, 305 P 2d 761, 763; State v. Haley, 132 M 366, 318 P 2d 1084, 1085; State v. Fairburn, 135 M 449, 340 P 2d 157, 161; State v. Randall, 137 M 534, 353 P 2d 1054, 1056.

94-6404. (11844) Form of.**Sufficiency**

Information which charged the defendant with manslaughter in the form established in this section and used the words "did then and there wilfully, wrongfully, unlawfully, knowingly and feloniously kill one Duane Leslie Egge, a human being of the age of five years, contrary" was suffi-

cient. State v. Duncan, 130 M 562, 305 P 2d 761, 763.

References

Cited or applied in State v. Bosch, 125 M 566, 242 P 2d 477, 487; State v. McLeod, 131 M 478, 311 P 2d 400, 406; State v. Haley, 132 M 366, 318 P 2d 1084, 1085; State v. Fairburn, 135 M 449, 340 P 2d 157, 161.

94-6405. (11845) It must be direct and certain.

Assault in First Degree

Defendant's contentions that trial court erred in overruling his demurrer to the amended information and in overruling his objection to the introduction of evidence and his motion to dismiss the information were without merit, where the amended information complied with the requirements of this section and sections 94-6401, 94-6403, 94-6404 and 94-6412. *State v. McLeod*, 131 M 478, 311 P 2d 400, 406.

Bill of Particulars Not Available

In a criminal case no bill of particulars may be required or ordered. *State v. Bosch*, 125 M 566, 242 P 2d 477, 487. (This case expressly overrules any statement or holding to the contrary made by the court.)

References

Cited or applied in *State v. Duncan*, 130 M 562, 305 P 2d 761, 763; *State v. Haley*, 132 M 366, 318 P 2d 1084, 1085; *State v. Randall*, 137 M 534, 353 P 2d 1054, 1056.

94-6407. (11847) Repealed.

Repeal

This section (Sec. 188, p. 218, Cod. Stat. 1871), prohibiting the charging of more

than one offense in the same indictment or information, was repealed by Sec. 3, Ch. 172, Laws 1961.

94-6407.1. Pleadings charging more than one offense—consolidation or separation for trial. An indictment, information, complaint or accusation may charge two or more different offenses connected together in their commission, or different statements of the same offense or two or more different offenses of the same class of crimes or offenses, under separate counts, and if two or more indictments, informations, complaints or accusations are filed in such cases in the same court, the court may order them to be consolidated. The prosecution is not required to elect between the different offenses or counts set forth in the indictment, information, complaint or accusation, but the defendant may be convicted of any number of the offenses charged, and each offense of which the defendant is convicted must be stated in the verdict or the finding of the court; provided, that the court in which the case is triable, in the interests of justice and for good cause shown, may in its discretion order that the different offenses or counts set forth in the indictment, information, complaint and accusation be tried separately or divided into two or more groups and each of said groups tried separately. An acquittal of one or more counts shall not be deemed an acquittal of any other count.

History: En. Sec. 1, Ch. 172, L. 1961.

Title of Act

An act to provide that an indictment, information, complaint or accusation may charge two or more offenses under separate counts; providing for the consolidation of two or more indictments, informations, complaints, or accusations; providing that election by prosecution is not required; providing that conviction may be had on

any number of offenses charged; providing for a statement in verdict, and that the court may order trial of different offenses charged separately or in groups; providing for effect of acquittal on part of counts; amending section 94-6703, Revised Codes of Montana, 1947, relating to demurrers in criminal cases, by deleting subsection (3) thereof; and repealing section 94-6407, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith.

94-6412. (11852) Indictment or information, when sufficient.

Assault in First Degree

Trial court committed no error in overruling defendant's demurrer to amended information and in overruling his objection to the introduction of evidence and his motion to dismiss the information, where the amended information complied with the requirements of this section and

sections 94-6401, 94-6403 to 94-6405. *State v. McLeod*, 131 M 478, 311 P 2d 400, 406.

Manslaughter

Information for manslaughter in the form prescribed in section 94-6404, which complied with the requirements of sections 94-6403, 94-6405, and met the tests pro-

vided in this section, was sufficient. *State v. Haley*, 132 M 366, 318 P 2d 1084, 1085.

References

Cited in *State v. Tursich*, 127 M 504,

267 P 2d 641, 643; *State v. Duncan*, 130 M 562, 305 P 2d 761, 763; *State v. Fairburn*, 135 M 449, 340 P 2d 157, 161.

94-6413. (11853) Not insufficient for defect of form, etc.

References

Cited or applied in *State v. Fairburn*,

135 M 449, 340 P 2d 157, 161; *State v. Davis*, — M —, 376 P 2d 727, 729.

94-6423. (11863) Distinction between accessory before the fact, etc.

Aiding and Abetting

While the statute defines larceny as the taking of property from the person of another yet it is sufficient to show the defendant's guilt that he aided or abetted in the commission of the crime. *State v. Maciel*, 130 M 569, 305 P 2d 335, 336.

Instructions

Where a verbal declaration of one co-defendant that he and the other codefendant were partners was given in evidence, it was error for the court to refuse defendant's instruction that such verbal declaration is insufficient to establish a partnership. Although a partnership was immaterial because of this section and

section 94-204, yet the jury may have given full consideration to the declaration and found defendant guilty on the strength thereof. *State v. Keller*, 126 M 142, 246 P 2d 817, 821.

Operation and Effect

Under this section and section 94-204, evidence was sufficient to sustain a conviction of assault in the second degree where defendant was at the scene of the crime and was admittedly a participant therein; it is not necessary to show that he actually fired any one of the guns. *State v. Simon*, 126 M 218, 247 P 2d 481, 485.

94-6428. (11868) Of what offense a defendant may be convicted.

Verdict for Lesser Offense

Where defendant was charged with murder in the second degree it was permis-

sible for the jury to find him guilty of involuntary manslaughter. *State v. Allison*, 122 M 120, 199 P 2d 279, 288.

94-6429. (11869) Allegation as to partnership property.

References

Cited or applied in *State v. Fairburn*, 135 M 449, 340 P 2d 157, 161.

94-6434. (11874) When not material.

Failure to Endorse True Names of Witnesses on Indictment

If person has gone to trial under indictment on which witnesses names were designated as Richard Roe and John Doe and convicted, the Supreme Court would be

required to sustain the conviction if possible and burden would be on defendant to show prejudice. *State ex rel. Porter v. District Court*, 124 M 249, 220 P 2d 1035, 1043.

CHAPTER 65—ARRAIGNMENT OF DEFENDANT

Section 94-6513. Compensation of attorney for accused.

94-6501. (11875) Defendant must be arraigned in the court, etc.

Admissibility of confession as affected by delay in arraignment of prisoner. 19 ALR 2d 1331.

94-6512. (11886) Right to counsel on arraignment.

Appointment of Counsel

Defendant convicted of forgery on plea of guilty was not entitled to a writ of habeas corpus on the ground that he was

not advised by the district court of his legal rights, nor was counsel appointed for him as required by this section, where there was no showing of prejudice such

as would overcome the presumption that the district court performed its judicial duty; and a period of more than two years and ten months had elapsed since the arraignment but his petition for the writ was the first time such contention had been made before the supreme court. In *re Diserly's Petition*, — M —, 370 P 2d 763, 764.

Court Appointed Counsel

Where counsel was appointed by the court, after withdrawal of defendant's original counsel, but trial was commenced three days after such appointment, such appointment was made purposeless as it is the duty of the court to make the appointment effective by giving a reasonable time for the preparation of the case. *State v. Blakeslee*, 131 M 47, 306 P 2d 1103, 1107. (Dissenting opinion, 131 M 47, 306 P 2d 1103, 1107.)

94-6513. (11887) Compensation of attorney for accused. Whenever, in a criminal action or proceeding in the district court, an attorney-at-law defends a person charged with any offense, by order of the court, on the ground that the accused is unable to procure or employ counsel, the county in which such criminal action or proceeding may have arisen is liable to pay such attorney for his services such sum as the judge certifies to be a reasonable compensation therefor.

History: En. Sec. 1, p. 12, L. 1881; re-en. Sec. 197, 3d Div. Comp. Stat. 1887; amd. Sec. 1892, Pen. C. 1895; amd. Sec. 1, Ch. 33, L. 1903; re-en. Sec. 9189, Rev. C. 1907; re-en. Sec. 11887, R. C. M. 1921; amd. Sec. 1, Ch. 38, L. 1949.

Amendment

The 1949 amendment omitted a portion of this section which placed specific limitations on the amount allowed as follows, capital cases not to exceed \$100, other felonies not to exceed \$50, and in other cases not to exceed \$25.

Perfection of Appeal

Where district court appointed counsel for the defendant and ordered preparation of the record for an appeal to the supreme court, all at public expense, defendant having had no voice in the choice, in the interest of justice it was incumbent upon the supreme court to consider the contended errors although court-appointed counsel failed to timely file the notice of appeal. *State v. Frodsham*, 139 M 222, 362 P 2d 413, 418.

Right to Appoint Counsel

There is no provision in the law for appointment of counsel in the supreme court, such appointments are made by the district courts. In *re Pelke's Petition*, 139 M 354, 365 P 2d 932, 935; *Brown v. State*, — M —, 371 P 2d 262, 263.

Repealing Clause

Section 2 of Ch. 38, Laws 1949 repealed all acts or parts of acts in conflict therewith.

References

Cited or applied in *State ex rel. Irvine v. District Court*, 125 M 398, 239 P 2d 272, 281; *State v. Frodsham*, 139 M 222, 362 P 2d 413, 416; In *re Pelke's Petition*, 139 M 354, 365 P 2d 932, 935; *Brown v. State*, — M —, 371 P 2d 262, 263.

CHAPTER 66—SETTING ASIDE THE INDICTMENT OR INFORMATION

94-6601. (11891) Indictment, when set aside on motion.

Failure To Endorse Names on Indictment

Where timely motion is made before trial the statute requires the indictment to be set aside when names of witnesses are not endorsed on indictment. *State ex rel. Porter v. District Court*, 124 M 249, 220 P 2d 1035, 1043.

Indictment must be set aside where witnesses names on indictment were Richard Roe and John Doe and witnesses real names were not supplied to defendant and if there were no witnesses that fact should be shown by the prosecution either by a verified pleading or under oath. *State ex*

rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043. (In this case it was said that if other grounds had not required setting aside of indictment, court would have been disposed to return case to trial court to permit defendant to interrogate prosecutor and grand jury foreman as to whether there were witnesses whose names were not endorsed on indictment.)

If person has gone to trial under indictment on which witnesses names were designated as Richard Roe and John Doe and convicted, the Supreme Court would

be required to sustain the conviction if possible and burden would be on defendant to show prejudice. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

Grounds Exclusive

The grounds for setting aside an indictment of a grand jury as set forth in this section are exclusive. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1037.

Presence of Unauthorized Person

Where there has been a violation of subd. 3 of this section the accused need not show prejudice, but the very appearance of an unauthorized person before the grand jury is sufficient to set aside the indictments. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051, distinguished in 309 P 2d 320.

Presence of Unauthorized Person—Special Prosecutor Before Grand Jury

The appearance of "special prosecutor"

before the grand jury was ground for setting aside the indictment. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, distinguished in 309 P 2d 320.

The press of business in the office of district attorney does not justify the appointment of a "special prosecutor" to appear before the grand jury. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051.

Presence While Indictment under Consideration

A case is "under consideration" before the grand jury within the meaning of subsection 3 of this section when witnesses are being examined. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1044, distinguished in 309 P 2d 320.

References

Cited or applied in State ex rel. Porter v. First Judicial Dist., 123 M 447, 215 P 2d 279; State v. Bosch, 125 M 566, 242 P 2d 477, 487.

94-6602. (11892) Defendant waives objections, etc.

Amendment of Information

There was no error in permitting information to be amended to allege prior conviction when there was no objection by defendant and defendant's attorney consented to its filing. State ex rel. Treat v. District Court, 122 M 249, 200 P 2d 248.

References

Cited or applied in State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1038.

94-6603. (11893) Motion, when heard—if denied or granted, etc.

References

Cited or applied in State ex rel. Porter v. First Judicial Dist., 123 M 447, 215 P 2d 279.

94-6604. (11894) Effect of order of resubmission.

Cross-Reference

See note to sec. 94-6605. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051.

94-6605. (11895) Order no bar to another prosecution.

Operation and Effect

Where district court was ordered to set aside indictment on ground set forth in subd. 3 of section 94-6601, prosecution for the offenses charged was not barred but the cases were ordered resubmitted to the

county attorney in accordance with section 94-6604 for the filing of such information as he believes necessary. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051, distinguished in 309 P 2d 320.

CHAPTER 67—DEMURRER

Section 94-6703. Grounds of demurrer.

94-6701. (11896) Pleading on part of defendant.

Operation and Effect

This section is exclusive and there is

no section of the Criminal Code directing or requiring a bill of particulars to be

furnished to a defendant charged with a criminal offense. *State v. Bosch*, 125 M 566, 242 P 2d 477, 487.

References

Cited or applied in *State ex rel. Borberg v. District Court*, 125 M 481, 240 P 2d 854, 857, 859; *State v. Duncan*, 130 M 562, 305 P 2d 761, 762.

94-6702. (11897) Demurrer on plea, when put in.

Operation and Effect

When a first conviction is set aside the defendant is not precluded upon a remand for a new trial from attacking the indictment or information. *State v. Hale*, 129 M

449, 291 P 2d 229, 230. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

References

Cited or applied in *State v. Duncan*, 130 M 562, 305 P 2d 761, 762.

94-6703. (11898) Grounds of demurrer. The defendant may demur to the indictment or information, when it appears upon the face thereof, either—

1. If an indictment, that the grand jury by which it was found had no legal authority to inquire into the offense charged, by reason of its not being within the legal jurisdiction of the county; or, if an information, that the court has no jurisdiction of the offense charged therein;

2. That it does not substantially conform to the requirement of sections 94-6403, 94-6404 and 94-6405;

3. That the facts stated do not constitute a public offense;

4. That it contains any matter, which if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

History: En. Sec. 211, p. 222, Cod. Stat. 1871; re-en. Sec. 211, 3d Div. Rev. Stat. 1879; amd. Sec. 1, p. 73, L. 1885; re-en. Sec. 212, 3d Div. Comp. Stat. 1887; amd. Sec. 1922, Pen. C. 1895; re-en. Sec. 9200, Rev. C. 1907; re-en. Sec. 11898, R. C. M. 1921; amd. Sec. 2, Ch. 172, L. 1961. Cal. Pen. C. Sec. 1004.

tana, 1947, is hereby repealed and all acts and parts of acts in conflict herewith are hereby repealed."

Facts Stated Do Not Constitute a Public Offense

Information charging a violation of section 94-1805 (obtaining money under false pretenses) which only avers that the defendant made a "false" or "fraudulent" representation is not sufficient. It must expressly allege the facts which made the stated pretense false. *State v. Hale*, 129 M 449, 291 P 2d 229, 232, distinguished in 135 M 449, 453, 340 P 2d 157, 160. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

Amendment

The 1961 amendment deleted a subd. 3, which read, "3. That more than one offense is charged;" and renumbered the succeeding subdivisions.

Repealing Clause

Section 3 of Ch. 172, Laws 1961 read "Section 94-6407, Revised Codes of Mon-

DECISIONS UNDER FORMER LAW

Sufficiency of Information

An information which charges defendant with an infamous act against nature and then in describing the manner in which the crime was committed it alleged an assault, it is not open to the charge that it is duplicitous. Allegations with respect to the assault are merely descriptive of the means of accomplishing the

infamous crime against nature which never could be perpetrated against an unwilling participant without an assault. *State v. McSloy*, 127 M 265, 261 P 2d 663, 664.

References

Cited or applied in *State v. Bosch*, 125 M 566, 242 P 2d 477, 487.

94-6711. (11906) Objections, forming ground of demurrer, when taken.

References

Cited or applied in *State v. Hale*, 129 M

449, 291 P 2d 229, 233; *State v. MacLean*, 129 M 500, 291 P 2d 250, 251.

CHAPTER 68—PLEAS

94-6801. (11907) The different kinds of pleas.**References**

854, 857, 859, 861; State v. Porter, 130 M 299, 300 P 2d 952, 954.

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d

94-6802. (11908) Plea, how put in and its form.**Written "Special Plea in Bar" Not Authorized**

Justice of the peace was acting within his jurisdiction and in accordance with the law in overruling the defendant's written special plea in bar and ordering

the defendant to answer to the complaint in accordance with this section and sections 94-6801 and 94-100-4. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 857, 861.

94-6803. (11909) Plea of guilty, how put in and when withdrawn.**Denial of Motion to Withdraw**

Denial of motion to withdraw plea of guilty will not be reversed where chief contention was that he was misled by the erroneous advice of counsel as to his guilt under the law, when from the record of the trial court there was evidence which would have justified a finding of guilty, regardless of the correctness of the counsel's interpretation of the law. State v. Nance, 120 M 152, 184 P 2d 554, 561, distinguished in 194 P 2d 662.

Discretion of Court

The granting or refusal of permission to withdraw a plea of guilty and substitute a plea of not guilty rests in the discretion of the trial court and is subject to review only where an abuse of discretion is shown. State v. Nance, 120 M 152, 184 P 2d 554, 560, distinguished in 194 P 2d 662.

Guilty Plea Under Agreement with Prosecutor

While the supreme court will not encourage the making of bargains with persons charged of crime, where a defendant has changed his plea of not guilty to a plea of guilty on an agreement with the prosecuting attorney as to recommendation for sentences which were carried out, the supreme court, will not, after he obtained the benefits of the agreement, aid him in escaping its obligations, by ordering a withdrawal of the guilty plea. State v. Nance, 120 M 152, 184 P 2d 554, 561, distinguished in 194 P 2d 662.

Motion to Withdraw—Time for Filing

In order to receive favorable consideration an application to withdraw a plea of guilty should be made within a reasonable time. State v. Nance, 120 M 152, 184 P 2d 554, 561, distinguished in 194 P 2d 662.

Waiver of Jury Trial

The entering of a plea of guilty by a defendant waives his right to a jury

trial. State v. Peters, — M —, 369 P 2d 418, 419.

When Plea of Guilty may be Withdrawn after Judgment

Where the evidence discloses that there was a grave doubt that the defendant had the mental capacity to appreciate and understand what he was doing and the consequences thereof, when without benefit of counsel, he pleaded guilty to the charge of murder, defendant should have been allowed to withdraw his plea of guilty and enter a plea of not guilty. State v. Dryman, 125 M 500, 241 P 2d 821, distinguished in 308 P 2d 971.

Withdrawal of Plea of Guilty after Judgment

Held, on the facts of the particular case, that where the defendant at the time of entering his plea of guilty thought that he had an understanding as to what his sentence would be; that no direct commitment was made to him by any of the officers but the officers had made statements to others who were in contact with the defendant and upon whose advice he relied, the ends of justice would be best served by permitting the defendant to change his plea. State v. Morgan, 131 M 58, 307 P 2d 244, distinguished in 134 M 301, 304, 330 P 2d 968, 970.

District court did not abuse its discretion in entering order denying defendant's motion to withdraw plea of guilty and substitute plea of not guilty where the record disclosed that defendant entered his plea of "guilty" on December 30, 1960; sentence was pronounced on January 23, 1961; and the motion was not filed in the district court until July 24, 1961, being six months after imposition of the sentence and six months and twenty-four days after entry of the plea. State v. Peters, — M —, 369 P 2d 418, 419.

References

Cited or applied in State ex rel. Bor-

berg v. District Court, 125 M 481, 240 P 2d 854, 859.

94-6805. (1911) What may be given in evidence under plea of not guilty.**Operation and Effect**

The bar to a prosecution for misdemeanor where defendant is not brought to trial within six months after the filing of

the information as provided for in section 94-9507 may properly be raised by a plea of not guilty. State v. Porter, 130 M 299, 300 P 2d 952, 954.

CHAPTER 69—CHANGE OF PLACE OF TRIAL OR JUDGE

Section 94-6913. Disqualification of judge—affidavit—number of changes authorized—calling in of judge to preside.

94-6901. (11916) What petition to contain.**Application**

Trial court was in error for refusing to grant a change of venue where evidence disclosed that local newspapers had fanned the feeling of the community against the defendant and that county officials themselves felt that feeling against the defendant was so high that they moved him for safety to the state prison. State v. Dryman, 127 M 579, 269 P 2d 796, 800. (Dissenting opinion, 127 M 579, 269 P 2d 796, 801.)

Change of Place of Trial

Where Supreme Court ordered a new trial and that it be had in some county not adjacent to Toole county because of the prejudice of the people in Toole county, trial court erred in directing that the new trial take place in Teton county. Although Teton county is not adjoining Toole county but is separated by some twenty miles, yet the word adjacent has no arbitrary meaning or definition; the term is a relative and not an absolute one, and the exact meaning of which, in any particular case, is determinable principally by the context in which it is used. State ex rel. Dryman v. District Court, 128 M 402, 276 P 2d 969, 970.

An application for a change of place of trial is addressed to the sound discretion of the trial court and a clear abuse of discretion must be shown, or the ruling of the trial court will not be disturbed. State v. Bischert, 131 M 152, 308 P 2d 969, 971; In re Larocque's Petition, 139 M 405, 365 P 2d 950, 951.

In support of an application for change of place of trial a denial of bail could not be claimed as showing prejudice by the trial judge for such is a mere preliminary matter and has nothing to do with the trial on the merits. State v. London, 131 M 410, 310 P 2d 571, 580.

Defendant in a criminal proceeding was not entitled to a change of venue where files did not contain any application for a change of place of trial as required by this section. In re Larocque's Petition, 139 M 405, 365 P 2d 950, 951.

Prejudice of Judge

Action of a judge in refusing to set bond pending appeal from a manslaughter conviction is not an act which prejudices a defendant during a trial. State v. Bischert, 131 M 152, 308 P 2d 969, 971.

94-6906. (11921) When change of place of trial not granted.**References**

Cited or applied in State v. Searle, 125 M 467, 239 P 2d 995, 999.

94-6913. Disqualification of judge—affidavit—number of changes authorized—calling in of judge to preside. A district judge must not sit or act as such in any criminal action or proceeding when either party makes and files an affidavit, as hereinafter provided, that he has reason to believe, and does believe, he cannot have a fair and impartial hearing or trial before a district judge by reason of the bias and prejudice of such judge. Such affidavit may be made by any party to the criminal action, motion or proceeding, personally, or by his attorney or guardian and shall be filed with the clerk of the district court in which the same may be pend-

ing, at least fifteen days prior to the trial of said cause, or any retrial thereof after appeal. Upon the filing of the affidavit, the judge, as to whom said disqualification is averred, shall be without authority to act further in the criminal action, motion or proceeding, but the provisions of this section do not apply to the arrangement of the calendar, the regulation of the order of business, the power of transferring the criminal action or proceeding to some other court, nor to the power of calling in another district judge to sit and act in such criminal action or proceeding, providing that no judge shall so arrange the calendar as to defeat the purposes of this section. Not more than one judge can be disqualified for bias and prejudice, in said criminal action or proceeding, at the instance of the prosecution and not more than one judge at the instance of the defendant or defendants.

If there be more than one judge in any judicial district in which said affidavit is made and filed, another judge residing in the judicial district wherein the affidavit is made and filed must be called in to preside in such criminal action, motion or proceeding; if there be but one judge in the judicial district, then a district judge of another judicial district must be called in to preside in such criminal action, motion or proceeding; when another judge has assumed jurisdiction of a criminal action, motion or proceeding, the clerk of the district court in which the same was pending, shall at once notify the parties or their attorneys of record in the same, either personally or by registered mail, of the name of the judge called in.

If either party in any matter above mentioned shall file the affidavit as herein provided such party may not complain of any reasonable delay as the result thereof.

The provisions of this section shall be inapplicable to any person in any cause involving a direct contempt of court.

History: En. Sec. 1, Ch. 61, L. 1959.

Title of Act

An act to provide for the disqualification of district judges in criminal actions or proceedings; prescribing the grounds and procedure for disqualification; providing for assumption of jurisdiction by other district judges in event of disqualification; and repealing all other acts and parts of acts in conflict herewith.

Repealing Clause

Section 2 of Ch. 61, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Right to Disqualify Judge

In a criminal proceeding, this section

is the proper statute under which a defendant may disqualify a judge. Section 93-901, which applies only to civil cases, is inapplicable. In re Larocque's Petition, 139 M 405, 365 P 2d 950, 951.

The right to disqualify a judge in a criminal proceeding is purely statutory. It has no constitutional nor common-law basis. Therefore, the conditions precedent in this section must be followed. In re Larocque's Petition, 139 M 405, 365 P 2d 950, 951.

Where defendant filed no affidavit for disqualification of judge in criminal proceeding he waived the provisions of this section. In re Larocque's Petition, 139 M 405, 365 P 2d 950, 951.

CHAPTER 70—MODE OF TRIAL—FORMATION OF JURY AND CALENDAR OF ISSUES—POSTPONEMENT OF TRIAL

94-7001. (11928) Issue of fact defined.

References

Cited or applied in *State v. Duncan*, 130 M 562, 305 P 2d 761, 762.

94-7002. (11929) How tried.**Directed Verdict in Criminal Case**

In a prosecution for unlawfully driving a truck with an overload which is a misdemeanor, it was error for the court to instruct and direct the jury to return a verdict of guilty where the evidence as to the true weight of the truck was in

conflict as shown by two different state police scales. *State v. Baillargerion*, 126 M 310, 249 P 2d 799, 801.

References

Cited or applied in *State v. Winter*, 129 M 207, 285 P 2d 149, 159.

94-7004. (11931) When presence of defendant is necessary on the trial.

Absence of accused at return of verdict in felony case. 23 ALR 2d 456.

Impaneling or selection of jury in accused's absence. 26 ALR 2d 762.

94-7005. (11932) Formation of trial jury.

Proof as to exclusion of or discrimination against eligible class or race in respect to jury in criminal case. 1 ALR 2d 1291.

Indoctrination by court of persons summoned for jury service as infringing constitutional right of trial by jury. 2 ALR 2d 1104.

Exclusion of women from grand or trial jury panel in criminal case as violation of constitutional rights of accused or as ground for reversal of conviction. 9 ALR 2d 661.

94-7008. (11935) Defendant entitled to two days to prepare for trial.**Continuance**

Trial judge did not abuse discretion in denying defendant's application for continuance over the term where trial was set for May 7, 1956, after defendant entered

plea of guilty on April 24, 1956. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407.

References

Cited or applied in *State v. Blakeslee*, 131 M 47, 306 P 2d 1103, 1104.

94-7009. (11936) Notice and affidavits for postponement.**References**

Cited or applied in *State v. Blakeslee*, 131 M 47, 306 P 2d 1103, 1104.

94-7010. (11937) Postponement for cause.**References**

Cited or applied in *State v. Blakeslee*, 131 M 47, 306 P 2d 1103, 1104.

94-7012. (11939) Effect of failure to apply.**References**

Cited or applied in *State v. Blakeslee*, 131 M 47, 306 P 2d 1103, 1104.

94-7013. (11940) Case set for trial.**References**

Cited in *State v. Saginaw*, 124 M 225, 220 P 2d 1021, 1025.

CHAPTER 71—CHALLENGING THE JURY

94-7101. (11941) Definition and division of challenges.**Operation and Effect**

Sections 94-7101 to 94-7123 provide the procedure for interposing a challenge to

the panel or to an individual juror. *State v. Deeds*, 130 M 503, 305 P 2d 321, 323.

94-7105. (11945) Upon what founded.**References**

Cited or applied in State v. Deeds, 130 M 503, 305 P 2d 321, 324.

94-7107. (11947) Exception, if sufficiency of the challenge be denied.**Operation and Effect**

Where defendant filed a verified, specific and detailed challenge to a jury panel and the county attorney did not deny the sufficiency of the facts alleged and the defendant also filed a timely motion for the issuance of a subpoena to the jury commissioners to appear, the trial court could not presume the jury commissioners had performed their duty in selecting the panel; hence, it was error for the trial court to overrule defendant's motion based on the presumption that the jury commissioners had performed in accordance with

the law. State v. Deeds, 130 M 503, 305 P 2d 321, 324.

Trial of Facts Required

If a challenge to the panel alleges facts which, if true, would show a material variation from the statutory procedure in making up the jury list, the court could not, on the basis of a presumption that the jury commissioners had done their duty, summarily deny the challenge, particularly in the absence of an exception by the adverse party. State v. Chapman, 139 M 98, 360 P 2d 703.

94-7108. (11948) If exception overruled, court may allow denial, etc.**References**

Cited or applied in State v. Deeds, 130

M 503, 305 P 2d 321, 324; State v. Chapman, 139 M 98, 360 P 2d 703.

94-7109. (11949) Denial of challenge, how made, and trial thereof.**Trial of Facts Required**

If a challenge to the panel alleges facts which, if true, would show a material variation from the statutory procedure in making up the jury list, the court must try the facts and may not summarily deny the challenge on the basis of a presumption

that the jury commissioners have done their duty. State v. Chapman, 139 M 98, 360 P 2d 703.

References

Cited or applied in State v. Deeds, 130 M 503, 305 P 2d 321, 324.

94-7115. (11955) Number of peremptory challenges.**References**

Cited or applied in State v. Porter, 125 M 503, 242 P 2d 984, 985.

94-7116. (11956) Challenges of state.**References**

Cited or applied in State v. Porter, 125 M 503, 242 P 2d 984, 985.

94-7119. (11959) Particular causes of challenge.**References**

Cited or applied in State v. Porter, 125 M 503, 242 P 2d 984, 985.

94-7120. (11960) Ground of challenge for implied bias.**References**

Cited or applied in State v. Porter, 125 M 503, 242 P 2d 984, 985.

94-7122. (11962) Causes of challenge, how stated.**Challenges for Cause**

Where the state challenged three jurors

for cause, and the evidence showed that one of the jurors was nearly deaf, and the

other two had formed opinions, the court was correct in excusing the jurors for cause. This section is not a limitation upon the power of the court in granting challenges which are warranted. *State v. Gates*, 131 M 78, 307 P 2d 248.

Purpose

The purpose of this section was to re-

quire the ground of challenge to be stated before the challenger is in a position to predicate error on the court's refusal to sustain a challenge. It was not intended as a limitation upon the power of the court in granting challenges which the facts warrant. *State v. Gates*, 131 M 78, 307 P 2d 248, 249.

94-7127. (11967) Decision of court to be entered.

Overruling Challenge

Where court relied on answers to last two questions and on the assumption that there was a misunderstanding as to the earlier questions in examining a prospective juror for prejudice, the overruling of the challenge would not be disturbed especially where the defendant had three peremptory challenges left at the time and

exercised one to discharge such juror, and fact that defendant regarded other jurors as undesirable on which he might have exercised his challenge gave him no right to have such juror excused for bias where there was no showing that such jurors were disqualified. *State v. Allison*, 122 M 120, 199 P 2d 279, 286.

CHAPTER 72—THE TRIAL

94-7201. (11969) Order of trial.

Instructions

Objections

Objection to instruction that it "is not a correct statement of the law; it is not applicable to the facts in this case" does not comply with this section. *State v. Hay*, 120 M 573, 194 P 2d 232, 237.

Objection to instruction that "it is repetitious and not a correct statement of the law" does not comply with this section. *State v. Hay*, 120 M 573, 194 P 2d 232, 237.

Any error in giving instructions is not available to appellants on appeal where the record shows no objections made by the appellants. *State v. Holt*, 121 M 459, 194 P 2d 651, 654.

Where instructions as finally proposed to be given were not objected to by counsel for defendant, the district court by statute was expressly forbidden to grant a new trial and the Supreme Court is forbidden to reverse the cause, even if error

existed in such instructions. *State v. Donges*, 126 M 341, 251 P 2d 254, 255.

Subd. 1

Failure to Read Information

It is not error to fail to read the information, there being no statutory requirement for such procedure. *State v. Gall*, 135 M 131, 337 P 2d 932.

Subd. 4

Bill of Exceptions

Where attorney for defendant presented bill of exceptions and prayed that the same be signed, settled and allowed, he could not be heard to complain on appeal that his bill of exceptions was not accurate. *State v. Pankow*, 134 M 519, 333 P 2d 1017, 1020.

References

Cited or applied in *State v. Maciel*, 130 M 569, 305 P 2d 335, 337.

94-7203. (11971) Defendant presumed innocent—reasonable doubt.

Burden of Proof

In criminal cases the burden of proof never shifts, but the burden of the evidence may shift frequently. *State v. Moorman*, 133 M 148, 321 P 2d 236, 238.

In a prosecution for grand larceny, an instruction which had the effect of placing a burden on the defendant to explain his possession of stolen property was erroneous. Such a burden deprives defendant of his cloak of innocence and forces him to testify. *State v. Greeno*, 135 M 580, 342 P 2d 1052.

Operation and Effect

In a prosecution for the crime of carrying a concealed weapon; wherein the defendant was found guilty by a jury, it was held on appeal that in view of the uncertainty in the mind of the state's only eyewitness as compared with witnesses for the defendant, coupled with the effect of this section, the evidence was not sufficient to justify a conviction for the crime charged. *State v. Gilbert*, 125 M 104, 232 P 2d 338, 341.

94-7209. (11977) Rules of evidence in civil actions, etc.**Adverse Witness Statute**

In a criminal case the state of Montana is the opposite party to the defendant, and former section 93-1901-9, relating to calling the opposite party, is not applicable to a criminal proceeding. *State v. Moorman*, 133 M 148, 321 P 2d 236, 238.

Inspection of Writings

Even if section 93-8301 [now superseded by sec. 93-2705-9] is made applicable to criminal cases by this section, defendant was not entitled to the inspection of writ-

ten materials, where there was no showing as to what the material consisted of, whether it was relevant to the defense, or that it was admissible in evidence. *State ex rel. Keast v. District Court*, 135 M 484, 342 P 2d 1071.

References

Cited or applied in *State v. Storm*, 127 M 414, 265 P 2d 971, 976 (dissenting opinion); *State v. Piveral*, 127 M 427, 265 P 2d 969, 970 (dissenting opinion); *State v. Reid*, 127 M 552, 267 P 2d 986, 990.

94-7220. (11988) Conviction on testimony of accomplice.**Cross-Reference**

Child under sixteen not an accomplice to commission of infamous crime against nature, sec. 94-4120.

Corroboration

The evidence which corroborates the testimony of an accomplice could be furnished by the defendant. It could be circumstantial. It need not extend to every fact to which the accomplice testified and need not be sufficient to justify a conviction or establish a *prima facie* case of guilt: it being sufficient if it tends to connect defendants with the commission of the crime. Whether it tends to do so is a question of law, while its weight—its efficacy to fortify the testimony of the accomplice and render his story trustworthy—is a matter for the consideration of the jury. *State v. Donges*, 126 M 341, 251 P 2d 254, 257.

In a legal sense corroboration is something which leads an impartial and reasonable mind to believe that material testimony is true; it may also consist of admissions, declarations or conduct of the defendant, writings, or other documentary evidence which tends to show concert of action between the accomplice and the defendant. *State v. Harmon*, 135 M 227, 340 P 2d 128.

Instructions

Where the defense requested instructions as to the effect of accomplice's testimony and there was evidence in the record from which the jury might have concluded that a deputy sheriff was an accomplice of the defendant, the court should have instructed the jury that if they believed the deputy sheriff was an accomplice then they must weigh his evidence as provided by section 93-2001-1, subd. 4 and also that such evidence must be corroborated as required by this section. *State v. Porter*, 125 M 503, 242 P 2d 984, 990.

Insufficient Corroboration

In a prosecution for an infamous crime against nature, where the only evidence other than the testimony of the accomplice showed that the accomplice had stayed at the defendant's house over night and slept with the defendant, the corroborating evidence was not sufficient to sustain a conviction as it does nothing more than to show opportunity on the part of defendant to have committed the crime. *State v. Gangner*, 130 M 533, 305 P 2d 338.

Operation and Effect

In a sodomy case, court should have given the requested instructions of the defendant to the effect that if the jury finds the prosecuting witness was an accomplice, then the jury must acquit the defendant, where the only evidence connecting the defendant with the commission of the crime was the testimony of the prosecuting witness. *State v. Searle*, 125 M 467, 239 P 2d 995, 998.

Person Making Forged Instrument Not Accomplice of Person Passing Forged Instrument

The testimony of the person who forged the indorsement on a warrant and who was not implicated in the matter of passing or uttering the instrument is corroborating evidence to the testimony of an accomplice of the defendant charged with uttering the forged instrument. The person who forged the indorsement is not an accomplice to the defendant who uttered the instrument as the making of the instrument and the uttering of it are two separate crimes although they both constitute forgery. *State v. Phillips*, 127 M 381, 264 P 2d 1009, 1014. (See, however, the dissenting opinions in 127 M 381, 264 P 2d 1009, 1016, 1018.)

Sufficiency of Corroborative Evidence

Corroborating evidence need not be direct, but may be circumstantial; it need not be sufficient to justify a conviction, or to establish a *prima facie* case of guilt;

it need not be sufficient to connect the defendant with the commission of the crime, but it is sufficient if it tends to do so. *State v. Harmon*, 135 M 227, 340 P 2d 128.

Evidence was sufficient to corroborate the testimony given by alleged accomplice where the record disclosed facts and circumstances which tended to connect the defendant with the commission of burglary

in the first degree. *State v. Laverdure*, — M —, 370 P 2d 489, 491.

Weight Given Corroborative Evidence

If the trial judge is satisfied that the evidence is corroborative, it is his duty to submit the case to the jury to determine what effect should be given to the corroboration and whether it is sufficient to warrant a conviction. *State v. Harmon*, 135 M 227, 340 P 2d 128.

94-7227. (11995) When evidence on either side is closed, etc.

Directing Jury to Acquit Defendant

Where there is an utter failure or lack of evidence to establish the states case court may direct the jury to return a verdict for the defendant. *State v. Widdicombe*, 130 M 325, 301 P 2d 1116, 1118.

Operation and Effect

This section is applicable only in cases in which the trial court deems the evi-

dence, although tending to prove every element constituting the crime charged, insufficient in weight to warrant a conviction. *State v. Peschon*, 131 M 330, 310 P 2d 591, 595.

References

Cited or applied in *State v. Perez*, 126 M 15, 243 P 2d 309, 311; *State v. Allen*, 128 M 306, 275 P 2d 200, 205.

94-7228. (11996) View of place of offense or property.

Condition of Premises

The fact that the premises to be viewed had accumulated dirt which had been hastily swept away, that doors had been replaced and the view was bleak and morbid furnished no ground for interfering with an order permitting a view of the premises. *State v. Allison*, 122 M 120, 199 P 2d 279, 292.

Discretion of Court

The matter of permitting the jury to view the premises rests entirely in the discretion of the trial court which will not be interfered with except in case of manifest abuse. *State v. Allison*, 122 M 120, 199 P 2d 279, 292.

94-7230. (11998) Jurors, separation of, during trial.

Separation of jury in criminal case. 21 ALR 2d 1088.

94-7236. (12004) In all other cases court to decide questions of law.

References

Cited or applied in *State v. Strobel*, 130 M 442, 304 P 2d 606, 613.

94-7239. (12007) If county attorney fails to attend, court may appoint.

References

Cited or applied in *State v. Cockrell*, 131 M 254, 309 P 2d 316, 319.

CHAPTER 74—THE VERDICT

94-7407. (12023) Jury may find upon charge of previous conviction.

Plea of Guilty

This statute contemplated that the answer to charge or allegation of prior conviction should be an admission or denial, but a plea of guilty is an admission of the charge. *State ex rel. Treat v. District Court*, 122 M 249, 200 P 2d 248, 249.

Plea of Not Guilty

Contention of petitioner for writ of habeas corpus that his confinement was

illegal because information was amended before trial to charge a previous conviction of a felony and that while he entered a plea of not guilty to such charge of previous conviction the jury made no reference to it in their verdict, as provided by this section, was completely false, where the verdict of the jury stated that the jury found defendant guilty of the crime of felony, to wit: lewd and lascivious act upon a child, as alleged in the

information, and found the charge of previous conviction of felony, to wit: lewd and lascivious acts upon a child as alleged in the information true and left the fixing

of his punishment to the court. In *re Davis' Petition*, 139 M 622, 365 P 2d 948, 949.

CHAPTER 75—BILLS OF EXCEPTION

94-7504. (12040) Exceptions, how settled by supreme court.

References

Cited or applied in *State ex rel. Toner*

v. District Court, 127 M 603, 256 P 2d 1095.

94-7507. (12044) Settlement of bills of exceptions.

Operation and Effect

Since the responsibility for the preparation of the bill of exceptions lies with the appellant, he cannot be heard to complain on appeal that his own bill of exceptions is not accurate. *State v. Pankow*, 134 M 519, 333 P 2d 1017, 1020.

settle any bill of exceptions for the defendant. Such jurisdiction, once lost, could not be reinvested in the trial judge even by the stipulation of counsel. *State v. Kuntz*, 130 M 126, 295 P 2d 707, 708.

Waiver of Notice

Provisions Mandatory

Compliance with this section is mandatory. *State v. Kuntz*, 130 M 126, 295 P 2d 707, 708.

Where the time for presenting the bill of exceptions to the judge has expired the judge has lost jurisdiction after that to

Where the county attorney made no objection to the want of notice in the district court and actually stipulated that he had no amendments to offer and that the bill of exceptions as proposed was correct, then this constituted a waiver of formal notice. *State v. Nelson*, 130 M 466, 304 P 2d 1110, 1112.

94-7508. (12045) Record on appeal in criminal cases.

Dismissal of Appeal

The state's motion to dismiss an appeal will be granted where the defendant, although filing a notice of appeal, did not have settled or allowed a bill of exceptions, and omitted to file a transcript or

briefs in the Supreme Court when no extension of time has been granted and no showing that the appellant's failure and omission has been without laches on his part. *State v. McDonald*, 125 M 201, 232 P 2d 997.

CHAPTER 76—NEW TRIALS

94-7602. (12047) Its effect.

Operation and Effect

When a first conviction is set aside the defendant is not precluded upon a remand for a new trial from attacking the indictment or information. *State v. Hale*, 129 M

449, 291 P 2d 229, 230. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

References

Cited in *State ex rel. Nelson v. Ellsworth*, — M —, 375 P 2d 316, 318.

94-7603. (12048) Grounds for granting new trial.

Subd. 4

Operation and Effect

In a prosecution for statutory rape, there was no error where the jury reached a verdict of guilty, and then, in deciding on punishment, each member set down his proposed amount in years, the total was divided by twelve to get an average, and then the term of the punishment was fixed after further discussion. *State v. Moorman*, 133 M 148, 321 P 2d 236, 242.

A quotient verdict is not a lot verdict. *State v. Moorman*, 133 M 148, 321 P 2d 236, 243.

Subd. 7

Contradictory Statements by Witness

Where the key witness at the trial in which defendant was convicted of larceny made statements after the trial demonstrating that the testimony he gave was false and perjurious and, at the hearing on defendant's motion for new trial, the witness refused to give any testimony, the requirements for the granting of a new trial on the ground of newly discovered evidence were met and the defendant should have been granted a new trial. *State v. Greeno*, 135 M 580, 342 P 2d 1052.

Motion for New Trial after Appeal
Perfected

Once an appeal has been perfected to the Supreme Court the district court loses jurisdiction of the case, except that if a motion for a new trial is then pending the district court retains jurisdiction thereof, with power to rule thereon. *State v. Nicks*, 131 M 567, 312 P 2d 519, 520.

Where defendant had perfected an appeal to the Supreme Court, and then discovered new evidence, the Supreme Court had no jurisdiction to grant a new trial,

but upon defendant's prima facie showing of matters sufficient to warrant consideration, the court would instruct the district court to entertain defendant's motion for a new trial, and would stay further proceedings pending such motion. *State v. Nicks*, 131 M 567, 312 P 2d 519, 521.

References

Cited or applied in *State v. Winter*, 129 M 207, 285 P 2d 149, 159; *State v. Moorman*, 133 M 148, 321 P 2d 236, 243; *Petition of Davis*, 139 M 619, 361 P 2d 963.

94-7604. (12049) Applications for, how made.

References

Cited or applied in *State v. Nicks*, 131

M 567, 312 P 2d 519, 520; *Petition of Davis*, 139 M 619, 361 P 2d 963.

94-7605. (12050) Motions for new trial, how made—hearing.

References

Petition of Davis, 139 M 619, 361 P 2d 963.

CHAPTER 78—JUDGMENT—SUSPENSION OF SENTENCE AND PROBATION

Section 94-7821. Court may suspend sentence, when.

94-7822. Suspension of sentence—copy of judgment to be mailed to board of pardons and bureau of identification.

94-7824. Effect of suspended sentence.

94-7831. Investigation.

94-7832. Sentence.

94-7833. Information from courts.

94-7834. Effective date—application to persons presently on parole or probation or eligible to be placed thereon.

94-7835. Court to determine type of confinement.

94-7836. Continuation of work.

94-7837. Disposition of prisoner's earnings.

94-7838. Reduction of sentence.

94-7839. Violation.

94-7840. Work arrangement in another county.

94-7841. Persons guilty of contempt.

94-7810. (12064) Arraignment of defendant for judgment.

References

Kuhl v. District Court, 139 M 536, 366 P 2d 347, 354.

94-7811. (12065) What cause may be shown against the judgment.

References

Kuhl v. District Court, 139 M 536, 366 P 2d 347, 355.

94-7812. (12066) If no cause shown, judgment to be pronounced.

References

Kuhl v. District Court, 139 M 536, 366 P 2d 347, 355.

94-7813. (12067) Circumstances in aggravation or mitigation, etc.

Examination of Witnesses in Open Court

The extent of defendant's punishment on plea of guilty to grand larceny should

have been determined under section 94-2706 by the exercise of a sound discretion on the part of the trial judge after the cir-

cumstances had been "presented by the testimony of witnesses examined in open court" specifically provided for in this section and section 94-7814 subject to the provisions of section 94-7831. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 351.

94-7814. (12068) Testimony, how presented.

Discretion of Trial Court

This section does not confer upon the trial court the choice or discretion to determine for itself whether the provisions of section 94-7813 and this section shall be observed or applied, or whether such provisions shall be ignored, either in part or in toto. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 352.

Examination of Witnesses in Open Court

Where defendant pleaded guilty to grand larceny, the extent of his punishment should have been determined under section 94-2706 by the exercise of a sound discretion on the part of the trial judge after the circumstances had been "presented by the testimony of witnesses examined in open court" specifically provided for in this section and section 94-7813 subject to the provisions of section 94-7831. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 351.

If and when the trial judge requests a written report of investigation provided for in section 94-7831, then he must be governed by the provisions of this sec-

If and when the trial judge requests a written report of investigation provided for in section 94-7831, then he must be governed by the provisions of this section and section 94-7814. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 363.

tion and section 94-7813. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 363.

The sentence of a defendant, who pleaded guilty to grand larceny, to four years in the state prison, pursuant to section 94-2706, was reduced to one year by the supreme court where the trial court passed sentence upon receipt of private reports, including one requested by the trial judge as provided in section 94-7831, without allowing defendant or his counsel to learn of the representations in the reports and a hearing to present evidence to refute such representations. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 365.

Report of Investigator

Where trial judge requested report provided for in section 94-7831, unsworn representations and recommendations set forth in investigator's unsigned report privately offered to and privately received and adopted by the trial judge did not measure up to the requirements of this section and were not evidence. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 364.

94-7821. (12078) Court may suspend sentence, when. In all prosecutions for crimes or misdemeanors, except as hereinafter provided, where the defendant has pleaded or been found guilty, or where the court or magistrate has power to sentence such defendant to any penal or other institution in this state, and it appears that the defendant has never before been imprisoned for crime either in this state or elsewhere (but detention in an institution for juvenile delinquents shall not be considered imprisonment), and where it appears to the satisfaction of the court that the character of the defendant and circumstances of the case are such that he is not likely again to engage in an offensive course of conduct, and where it may appear that the public safety does not demand or require that the defendant shall suffer the penalty imposed by law, said court may suspend the execution of the sentence and place the defendant on probation in the manner hereinafter provided. Nothing in this act contained shall in any manner affect the laws providing the method of dealing with the juvenile delinquents. Any judge, who has suspended a sentence of imprisonment under this section, or his successor, is authorized thereafter, in his discretion, during the period of such suspended sentence to revoke such suspension and order such person committed, or may, in his discretion, order the prisoner placed under the jurisdiction of the state board of pardons as

provided by law, or retain such jurisdiction with his court as is authorized by him or his successor. Prior to such revocation of the order of such suspension, the person affected shall be given a hearing before said judge.

History: En. Sec. 1, Ch. 21, L. 1913; re-en. Sec. 12078, R. C. M. 1921; amd. Sec. 1, Ch. 184, L. 1937; amd. Sec. 1, Ch. 194, L. 1955.

Amendment

The 1955 amendment substituted "state board of pardons" for "state board of prison commissioners."

94-7822. Suspension of sentence—copy of judgment to be mailed to board of pardons and bureau of identification. When any judge has suspended a sentence of imprisonment as provided in section 94-7821, and has not ordered the prisoner placed under the jurisdiction of the state board of pardons, but has retained jurisdiction with the court, the clerk of said court shall nevertheless mail a full copy of the judgment of the court and the order suspending the sentence and certify the same to the state board of pardons, and bureau of identification at the state prison, or if the defendant would have been confined to an institution other than the state prison, then a copy shall be sent to the institution to which said court would have committed the defendant but for the suspending of the sentence.

History: En. Sec. 1, Ch. 40, L. 1939; amd. Sec. 2, Ch. 194, L. 1955.

board of pardons" for "state board of prison commissioners."

Amendment

The 1955 amendment substituted "state

Propriety and effect of court's indication to jury resulting in recommendation of suspended sentence. 8 ALR 2d 1001.

94-7823. (12079) Repealed.

Repeal

This section (Sec. 2, Ch. 21, L. 1913; amd. Sec. 1, Ch. 53, L. 1935; amd. Sec. 1, Ch. 65, L. 1953), relating to persons not

entitled to probation, was repealed by Sec. 4, Ch. 194, Laws 1955, effective April 1, 1955.

94-7824. (12080) Effect of suspended sentence. Whenever a sentence to any penal or other institution in this state has been imposed, but the execution thereof has been suspended and the defendant placed on probation, the effect of such order of probation shall be to place said defendant under the control and management of the state board of pardons and he shall be subject to the provisions of the probation, parole and executive clemency act.

History: En. Sec. 3, Ch. 21, L. 1913; re-en. Sec. 12080, R. C. M. 1921; amd. Sec. 3, Ch. 194, L. 1955.

to persons paroled from said institutions after a period of imprisonment therein."

Amendment

The 1955 amendment substituted "state board of pardons" for "state board of prison commissioners" and "subject to the provisions of the probation, parole and executive clemency act" for "subject to the same rules and regulations as applied

Repealing Clause

Section 4 of Ch. 194, Laws 1955 read "That sections 94-7823, 94-7825, 94-7826, 94-7827, 94-7828, 94-7829 and 94-7830 of the Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith, be, and the same are hereby repealed."

94-7825 to 94-7830. (12081 to 12086) Repealed.

Repeal

These sections (Secs. 4 to 9, Ch. 21, L. 1913), relating to probation, were repealed

by Sec. 4, Ch. 194, Laws 1955, effective April 1, 1955.

94-7831. Investigation. No defendant convicted of a crime, the punishment for which may include imprisonment in the state prison, shall be sentenced or his case otherwise disposed of, until a written report of investigation by a probation and parole officer shall have been presented to, and considered by, the court, unless the court deems such report unnecessary. The court may, in its discretion, order a pre-sentence investigation for a defendant convicted of any lesser crime or offense. Whenever an investigation is required, the probation and parole officers shall promptly inquire into the circumstances of the offense, the attitude of the complainant, the social history, criminal record, and the present conditions of the defendant and his immediate family. All local and state police agencies shall furnish to the probation and parole officer such criminal records as the probation and parole officer may request. Where, in the opinion of the court or the investigating authority, it is found desirable, such investigation shall include a physical and mental examination of the defendant. If a defendant is committed to an institution, the investigating agency shall send a report of such investigation to the institution at the time of commitment.

History: En. Sec. 5, Ch. 194, L. 1955.

Title of Act

An act to amend sections 94-7821, 94-7822, and 94-7824 of the Revised Codes of Montana, 1947, by substituting the words "Board of Pardons" for "Board of Prison Commissioners" and referring to the provisions of the Probation, Parole and Executive Clemency Act; providing for investigation by probation and parole officers prior to sentencing an individual convicted of a crime, if deemed necessary by the court; providing the sentences courts are authorized by law to impose; requiring courts to transmit to board of pardons certain statistical data; repealing sections 94-7823, 94-7825, 94-7826, 94-7827, 94-7828, 94-7829 and 94-7830 of the Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith; providing a saving clause; and providing an effective date clause.

Examination of Witnesses in Open Court

Where defendant pleaded guilty to grand larceny, the extent of his punishment should have been determined under section 94-2706 by the exercise of a sound discretion on the part of the trial judge after the circumstances had been "presented by the testimony of witnesses examined in open court" specifically pro-

vided for in sections 94-7813 and 94-7814 subject to the provisions of this section. *Kuhl v. District Court*, 139 M 536, 366 P 2d 347, 351.

If and when the trial judge requests a written report of investigation provided for in this section, then he must be governed by the provisions of sections 94-7813 and 94-7814. *Kuhl v. District Court*, 139 M 536, 366 P 2d 347, 363.

The sentence of a defendant, who pleaded guilty to grand larceny, to four years in the state prison, pursuant to section 94-2706, was reduced to one year by the supreme court where trial court passed sentence upon receipt of private reports without allowing defendant or his counsel to learn of the representations in the reports and a hearing to present evidence to refute such representations. *Kuhl v. District Court*, 139 M 536, 366 P 2d 347, 365.

Report of Investigator

Unsworn representations and recommendations set forth in an investigator's unsigned report privately offered to and privately received and adopted by the trial judge does not measure up to the requirements of section 94-7814. They are not evidence. *Kuhl v. District Court*, 139 M 536, 366 P 2d 347, 364.

94-7832. Sentence. Whenever any person has been found guilty of a crime or offense upon verdict or plea, the court may adjudge as follows:

(1) Release the defendant on probation, (2) Suspend the imposition or execution of sentence, (3) Impose a fine as provided by law for the offense, (4) Impose any combination of (1), (2), (3), or, (5) Commit the

defendant to a correctional institution with or without a fine as provided by law for the offense.

History: En. Sec. 6, Ch. 194, L. 1955.

94-7833. Information from courts. It shall be the duty of the court disposing of any criminal case to cause to be transmitted to the board of pardons statistical data in accordance with regulations issued by the board regarding all dispositions of defendants whether found guilty or discharged.

History: En. Sec. 7, Ch. 194, L. 1955.

94-7834. Effective date—application to persons presently on parole or probation or eligible to be placed thereon. This act shall be in full force and effect from and after April 1, 1955. The provisions of this act are hereby extended to all persons who, at the effective date hereof, may be on probation or parole, or eligible to be placed on probation or parole under existing laws with the same force and effect as if this act had been in operation at the time such persons were placed on probation or parole or became eligible to be placed thereon, as the case may be, provided that no person convicted and sentenced before the effective date shall have his rights and earned good time reduced by the application of this act.

History: En. Sec. 9, Ch. 194, L. 1955.

Separability Clause

Section 8 of Ch. 194, Laws 1955 read "If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

Forfeiture of Good Time Allowance

Under the provision of this section "that no person convicted and sentenced before the effective date shall have his rights and earned good time reduced by the application of this act" which in no matter attempts to prohibit the board of prison commissioners from exercising their discretionary power as to the allowance or forfeiture of good time and their power to make such rules and regulations as are reasonable in connection with this power, the board can deprive a prisoner of his good time for parole violations. In re Pelke's Petition, 139 M 354, 365 P 2d 932, 934; In re Owens' Petition, 139 M 637, 365 P 2d 935.

94-7835. Court to determine type of confinement. A court, after having sentenced a person to confinement in a county jail, may, in its discretion, upon request of the county attorney and sheriff of such county, and with the consent of the convicted person, order that any part of the imprisonment so imposed be served in confinement, with parole during the hours or periods the convicted person is actually employed.

History: En. Sec. 1, Ch. 249, L. 1959.

Title of Act

An act authorizing the court to sentence a convicted misdemeanor to confinement with parole during the periods of the prisoner's employment; specifying the disposition to be made of the prisoner's earnings; setting forth conditions for

diminution of the misdemeanor's sentence; declaring the consequences of the prisoner's violation of parole conditions; extending the provisions of this act to jail commitments for adjudicated contempt of a court of record; containing a savings clause, effective date and repealing all acts and parts of acts in conflict.

94-7836. Continuation of work. Upon the issuance of such an order under this act, the sheriff shall arrange for the convicted person to continue

his regular employment without interruption insofar as is reasonably possible; provided, however, that said prisoner shall be confined in the county jail during the hours when he is not employed.

History: En. Sec. 2, Ch. 249, L. 1959.

94-7837. Disposition of prisoner's earnings. The earnings of the prisoner shall be collected by the sheriff. From such earnings, the sheriff shall pay the prisoner's board and personal expenses, both inside and outside the jail and, to the extent directed by the court, pay the support of his dependents, if any, and any balance shall be retained until his discharge.

History: En. Sec. 3, Ch. 249, L. 1959.

94-7838. Reduction of sentence. The committing court may, in its discretion, upon request of the county attorney and sheriff of such county, reduce the sentence of the prisoner up to one-fourth of the full term, if, in the opinion of the court, the prisoner's conduct, diligence and general attitude merit such diminution.

History: En. Sec. 4, Ch. 249, L. 1959.

94-7839. Violation. In cases where the convicted person violates the conditions of said sentence, he shall be returned to the court; the court may then require that the balance of his sentence be spent in full confinement and, further, the court may cancel any diminution of sentence granted under this act.

History: En. Sec. 5, Ch. 249, L. 1959.

94-7840. Work arrangement in another county. The court may, by order, authorize the sheriff of the sentencing county to arrange with a sheriff of any other county within the state of Montana, to have the convicted person transferred to the other county where it appears the convicted person can continue his regular employment in the latter county; provided, however, when such transfer has been made to another county, the sheriff of the sentencing county shall still collect all moneys earned by the convicted person, and shall dispose of said moneys as provided by section 3 [94-7837] of this act.

History: En. Sec. 6, Ch. 249, L. 1959.

94-7841. Persons guilty of contempt. The provisions of this act shall extend to a person committed to the county jail by a court of record upon an adjudication of contempt of court.

History: En. Sec. 7, Ch. 249, L. 1959.

Savings Clause

Section 8 of Ch. 249, Laws 1959 read "If any competent court shall find any section or sections of this act to be unconstitutional or otherwise invalid, such finding shall not affect the validity of all remaining sections of this act, which can be given effect."

Repealing Clause

Section 9 of Ch. 249, Laws 1959 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 10 of Ch. 249, Laws 1959 provided the act should be in effect from and after the date of its passage and approval. Approved March 12, 1959.

CHAPTER 80—THE EXECUTION

- Section 94-8019. Western interstate corrections compact—contents.
 94-8020. Commitment or transfer of inmate to institution outside of state.
 94-8021. Effectuation of purposes of compact.
 94-8022. Hearings requested by other states—power of board of pardons and paroles and board of prison commissioners to hold.
 94-8023. Governor—power to enter into contracts.

94-8003. (12089) Judgment of fine and imprisonment, etc.

- Alteration of Judgment** conviction in any particular. State ex rel. Nelson v. Ellsworth, — M —, 375 P 2d 316, 319.
 The warden of the state prison has no authority to change or alter a judgment of

94-8009. (12095) Insanity of defendant, how determined.

- References** 29, 94 L Ed 615, 70 S Ct 466 (dissenting opinion).
 Cited in Solesbee v. Balkom, 339 U S

94-8019. Western interstate corrections compact—contents. The western interstate corrections compact as contained herein is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

1. Purpose and policy. The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

2. Definitions. As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States, the Territory of Hawaii, or, subject to the limitation contained in article VII, Guam.

(b) "Sending state" means a state party to this compact in which conviction was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had.

(d) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(e) "Institution" means any prison, reformatory or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

3. Contracts. (a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative

or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that moneys are legally available therefor, pay to the receiving state, a reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(c) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

4. Procedures and rights. (a) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be

required pursuant to the terms of any contract entered into under the terms of article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subdivision shall be borne by the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

5. Acts not reviewable in receiving state; extradition. (a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

6. Federal aid. Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

7. Entry into force. This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states, or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon and Washington.

8. Withdrawal and termination. This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other

party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

9. Other arrangements unaffected. Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

10. Construction and severability. The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 236, L. 1959.

Title of Act

An act adopting the western interstate corrections compact for the development and execution of a program for the reciprocal confinement, treatment and rehabilitation of certain classes of convicted felons in institutions of participating states; di-

recting cooperation of state agencies in the program; authorizing the holding of hearings requested by agencies of participating states; empowering the governor to enter into contracts under the compact with the approval of the board of examiners; and repealing all acts and parts of acts in conflict herewith; and providing an effective date.

94-8020. Commitment or transfer of inmate to institution outside of state. Any court or the board of prison commissioners having power to commit or transfer an inmate (as defined in article II (d) of the western interstate corrections compact) to any institution for confinement may commit or transfer such inmate to any institution outside this state if this state has entered into a contract or contracts for the confinement of inmates in said institution pursuant to article III of the western interstate corrections compact.

History: En. Sec. 2, Ch. 236, L. 1959.

94-8021. Effectuation of purposes of compact. The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions including but not limited to the making and submission of such reports as are required by the compact.

History: En. Sec. 3, Ch. 236, L. 1959.

94-8022. Hearings requested by other states—power of board of pardons and paroles and board of prison commissioners to hold. The board of pardons and paroles and the board of prison commissioners are hereby authorized and directed to hold such hearings as may be requested by any other party state pursuant to article IV (f) of the western interstate corrections compact.

History: En. Sec. 4, Ch. 236, L. 1959.

94-8023. Governor—power to enter into contracts. The governor is hereby empowered to enter into such contracts on behalf of this state as may be appropriate to implement the participation of this state in the western interstate corrections compact pursuant to article III thereof. No such contract shall be of any force or effect until approved by the board of examiners.

History: En. Sec. 5, Ch. 236, L. 1959.

Separability Clause

Section 6 of Ch. 236, Laws 1959 read "The provisions of this act shall be severable and if any phrase, clause, sentence, or provision of this act is declared to be unconstitutional or the applicability thereof to any state, agency, person or circumstance is held invalid, the constitutionality of this act and the applicability thereof to any other state, agency, person or cir-

cumstance shall, with respect to all severable matters, not be affected thereby."

Repealing Clause

Section 7 of Ch. 236, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 8 of Ch. 236, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 11, 1959.

CHAPTER 81—APPEALS TO SUPREME COURT—WHEN ALLOWED —HOW TAKEN—EFFECT THEREOF

94-8101. (12105) Defendant may appeal from any judgment.

Appeals from Justice Courts

The Supreme Court does not have appellate jurisdiction to review the judgments or orders of the justice courts of this state. State ex rel. Estes v. Justice Court of Jefferson County, 129 M 136, 284 P 2d 249, 250.

References

Cited or applied in State ex rel. Treat v. District Court, 124 M 234, 221 P 2d 436, 437; State v. Frodsham, 139 M 222, 362 P 2d 413, 416.

94-8103. (12107) Appeal, when may be taken by the defendant.

Denial of Petition for Writ of Error Coram Nobis

Leave to file an appeal from a denial of petition for a writ of error coram nobis by the district court was denied by the supreme court since no leave to file an appeal is required under the law and if an appeal was available from the district court order, the time therefor had not expired. Brown v. State, — M —, 371 P 2d 262, 263.

Order Denying Petition for Writ of Prohibition

Order of district court denying petition

of defendant for writ of prohibition to restrain justice court from further proceedings in criminal action was not a judgment and could not be appealed. State ex rel. Aho v. Justice Court of Laurel Township, 131 M 585, 313 P 2d 542, 543.

References

Cited in State ex rel. Treat v. District Court, 124 M 234, 221 P 2d 436, 437; State v. Zumwalt, 129 M 529, 291 P 2d 257, 259; State v. Greeno, 135 M 580, 342 P 2d 1052; State v. Frodsham, 139 M 222, 362 P 2d 413, 416.

94-8104. (12108) In what cases by the state.**Appeals Authorized**

An appeal by the state from the order of the court directing the jury to find for the defendant is expressly provided for in this section. *State v. Rother*, 130 M 357, 303 P 2d 393, 394.

Order Sustaining Demurrer to Complaint

An order sustaining a demurrer to a complaint does not fall within any of the provisions of this section and therefore is not an appealable order. *State v. Slater*, 130 M 630, 302 P 2d 470.

Right to Appeal Limited by This Section

Where defendant was convicted in justice of peace court and appealed to dis-

trict court in which court the action was dismissed on defendant's motion, state had no right of appeal under this section. *State v. McCluskey*, 125 M 20, 229 P 2d 169.

A district court's order of dismissal of the complaint following an appeal from a conviction in a justice of the peace court does not fall within the provisions of this section and therefore is not an appealable order. *State v. Becko*, 125 M 76, 230 P 2d 768, 769.

References

Cited or applied in *State v. Perez*, 126 M 15, 243 P 2d 309, 310; *State v. Widdicombe*, 130 M 325, 301 P 2d 1116, 1117.

94-8105. (12109) Appeals, time limitation.**Denial of Motion for Mistrial**

Part of defendant's appeal claiming that the trial court erred in denying motion of defendant for a mistrial was properly before the supreme court where it was taken within six months after the rendition of the judgment of conviction as prescribed by this section. *State v. Tiedemann*, 139 M 237, 362 P 2d 529, 530.

Denial of Motion for New Trial

Motion of state to strike defendant's third specification of error, contending that there was no substantial evidence to support the verdict or judgment of conviction, was granted where appeal was not taken within sixty days after the order denying the motion for a new trial. *State v. Tiedemann*, 139 M 237, 362 P 2d 529, 530.

Excuse for Failure to Take Appeal

In view of the time limit set forth in this section, death of defense counsel nearly a year after the trial and order of commitment was not sufficient showing to justify an original writ of habeas cor-

pus in supreme court. *Dryman v. State*, 139 M 141, 361 P 2d 959.

Notice of Appeal

Where judgment of conviction had been rendered on October 29, 1959, and defendant did not file his notice of appeal until May 10, 1960, the supreme court lost jurisdiction to entertain the appeal. *State v. Frodsham*, 139 M 222, 362 P 2d 413, 416.

Operation and Effect

Where person convicted in district court petitioned Supreme Court for writ of mandate to compel district to furnish "copy of trial and court record transcript" for purpose of appeal in forma pauperis, writ was denied where no timely application had been filed in accordance with section 94-8106. *State ex rel. Treat v. District Court*, 124 M 234, 221 P 2d 436, 437.

References

Cited or applied in *State v. Zumwalt*, 129 M 529, 291 P 2d 257, 259; *State v. Kuntz*, 130 M 126, 295 P 2d 707, 708; *Brown v. State*, — M —, 371 P 2d 262.

94-8106. (12110) Appeal, how taken.**Notice of Appeal**

Where district court appointed counsel for the defendant and ordered preparation of the record for an appeal to the supreme court, all at public expense, defendant having had no voice in the choice, in the interest of justice it was incumbent upon the supreme court to consider the contended errors although court-appointed counsel failed to timely file the notice of appeal. *State v. Frodsham*, 139 M 222, 362 P 2d 413, 418.

Oral Request for Appeal Ineffective

Oral request of intention to appeal made orally in open court fails to conform to this section and is wholly ineffectual to give the Supreme Court jurisdiction. *State ex rel. Treat v. District Court*, 124 M 234, 221 P 2d 436, 437.

References

Brown v. State, — M —, 371 P 2d 262.

94-8109. (12113) Effect of an appeal by the defendant.**Certificate of Probable Cause**

A certificate of probable cause should be granted by the district court whenever the question of whether or not the conviction

will be sustained on appeal is fairly debatable. *State ex rel. Nelson v. Ellsworth*, — M —, 375 P 2d 316, 319.

94-8112. (12116) Duty of clerks upon appeal.**Duty of Defense Counsel**

Where court-appointed counsel failed to advise the clerk's office as to what would be required for the record on appeal from conviction of burglary and there was no record before the supreme court, defendant had been denied his right to effective

representation by counsel on his appeal and the cause was remanded to the district court with directions to revoke appointment of present counsel and appoint a competent and effective counsel to properly prosecute the appeal. *State v. Bubnash*, 139 M 517, 366 P 2d 155, 158.

94-8113. (12117) Appeal, when tried.**In General**

Where appellant filed his transcript, and subsequently received seven separate orders for extensions of time to file his brief,

court would refuse appellant's application to vacate the hearing of the appeal. *State v. Cockrell*, 130 M 552, 305 P 2d 337, 338.

CHAPTER 82—DISMISSING APPEALS FOR IRREGULARITY—ARGUMENT ON APPEAL—JUDGMENT ON APPEAL

94-8207. (12125) Judgment without regard to technical errors.**Erroneous Instruction**

Erroneous instructions are not cause for reversal in the absence of any prejudice. *State v. Hay*, 120 M 573, 194 P 2d 232, 236.

from which the law imputes prejudice. *State v. Straight*, 136 M 255, 347 P 2d 482, 488.

Failure to Endorse True Names of Witnesses on Indictment

If person has gone to trial under indictment on which witnesses names were designated as Richard Roe and John Doe and convicted, the Supreme Court would be required to sustain the conviction if possible and burden would be on defendant to show prejudice. *State ex rel. Porter v. District Court*, 124 M 249, 220 P 2d 1035, 1043.

Transcript of Evidence—Necessity

In order to give effect to this section to determine whether the erroneous instructions were merely technical errors, or affected the substantial rights of the accused, it is necessary that the supreme court have before it a transcript of the evidence. *State v. Hay*, 120 M 573, 194 P 2d 232, 237.

Waiver of Error

References by county attorney as to the nature of the trial, an appeal from justice court, claimed as prejudicial error in the district court, was waived by counsel for defendant when he approved instructions to be given by the court which included reference to justice court proceedings and thereafter obtained deletion from the instructions of the phrase which read "and was found guilty following a jury trial." *State v. Gilbert*, 139 M 204, 362 P 2d 221, 224.

Prejudice of Defendant

It is up to the supreme court to decide whether an error affects the substantial rights of the defendant, and the defendant must demonstrate prejudice from the record. *State v. Straight*, 136 M 255, 347 P 2d 482, 488.

Prejudice in a criminal case will not be presumed, but rather must appear from the denial or invasion of a substantial right

94-8209. (12126) What may be reviewed on an appeal, etc.**Denial of Motion for Mistrial**

Part of defendant's appeal claiming that the trial court erred in denying motion of defendant for a mistrial was properly before the supreme court where it was taken within six months after the rendition of the judgment of conviction

as prescribed by section 94-8105. *State v. Tiedemann*, 139 M 237, 362 P 2d 529, 530.

References

Cited in *State v. Davis*, — M —, 376 P 2d 727, 729.

94-8210. (12127) May reverse, affirm or modify the judgment and order, etc.**Operation and Effect**

Where Supreme Court reversed conviction of defendant and remanded cause to district court with directions that if defendant have a new trial the district court should first make inquiry into the defendant's insanity but if the prosecution is dismissed that the district court deliver the defendant to the court of another county which has continuing jurisdiction over the defendant so that the latter court may inquire into his mental condition and make such disposition of the defendant as is required by law; and thereafter the prosecution was dismissed, the trial court then was compelled to deliver the defendant to the other district court and county attorney could not file a new information. The trial court was bound to follow the mandate of the Supreme Court as found in the remittitur and mandamus will lie to require that the district court follow such mandate. *State ex rel.*

Kitchens v. District Court, 130 M 57, 294 P 2d 907. (Dissenting opinion, 130 M 57, 294 P 2d 907, 911.)

Reduction of Sentence

The sentence of a defendant, who pleaded guilty to grand larceny, to four years in the state prison, pursuant to section 94-2706, was reduced to one year by the supreme court where trial court passed sentence upon receipt of private reports without allowing defendant or his counsel to learn of the representations in the reports and a hearing to present evidence to refute such representations as provided in sections 94-7813 and 94-7814. *Kuhl v. District Court*, 139 M 536, 366 P 2d 347, 365.

References

Cited in *State v. Brown*, 136 M 482, 351 P 2d 219, 222.

94-8215. (12132) Jurisdiction ceases after judgment remitted.**Operation and Effect**

Where Supreme Court reversed conviction and the remittitur went down in due course and was filed with the lower court, the Supreme Court at that time lost jurisdiction in the case. Specifically it lost any jurisdiction it may have had theretofore

to alter in any particular either the opinion or the mandate which followed upon that opinion, certainly unless the remittitur were first recalled. *State ex rel. Kitchens v. District Court*, 130 M 57, 294 P 2d 907, 908.

CHAPTER 83—IN WHAT CASES DEFENDANT MAY BE ADMITTED TO BAIL

94-8301. (12133) Admission to bail defined.

Mandamus to compel judge or other officer to grant accused bail or to accept proffered sureties. 23 ALR 2d 803.

Failure to appear, and the like, resulting in forfeiture or conditional forfeiture

of bail, as affecting right to second admission to bail in same noncapital criminal case. 29 ALR 2d 945.

94-8303. (12135) Offense not bailable.**Discretion of Trial Court**

Bail is a matter within the discretion of the trial court and its ruling will not be disturbed unless a clear abuse of discretion appears. *State v. London*, 131 M 410, 310 P 2d 571, 580.

Denial of bail could not be claimed as showing prejudice by the trial judge for such is a mere preliminary matter and has nothing to do with the trial on the merits. *State v. London*, 131 M 410, 310 P 2d 571, 580.

94-8305. (12137) When admitted to bail after conviction, etc.**Abuse of Discretion**

District court did not abuse its discretion when it refused to fix bail on appeal

of defendant sentenced to state prison. *Bubnash v. State*, 139 M 639, 366 P 2d 867.

CHAPTER 85—BAIL ON INDICTMENT OR INFORMATION BEFORE CONVICTION

Section 94-8508. Sureties for guaranteed arrest bond certificates—filing of undertaking—guaranteed arrest bond certificate.

94-8509. Violations of motor vehicle laws—posting of guaranteed arrest bond certificate in lieu of cash.

94-8510. Certification of names of sureties—withdrawal by surety company.

94-8501. (12145) When the offense is not capital.

Discharge, suspension, or remission of bail by reason of imprisonment of principal for a different offense. 4 ALR 2d 443.

94-8506. (12150) Sections applicable to qualifications, etc.**Amount of Bail**

Court did not err in refusing defendant's motion to reduce bail which was initially set at \$25,000, where the person assaulted was in a very precarious condition and it was not known whether he would live or die. When the judge was advised that the victim would probably live, he reduced the bail to \$7,500 which was a very reasonable amount. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407, 408.

The amount of bail which the judge may fix is within his sound legal discretion, and is always to be a reasonable amount.

State v. McLeod, 131 M 478, 311 P 2d 400, 407.

The trial judge in determining the amount of bail to be fixed, should take into consideration the enormity of the crime charged; the maximum penalty which the law authorizes; the pecuniary condition of the defendant; the probability of the defendant's flight to avoid punishment; his general character and reputation; the apparent nature and strength of the proof as bearing upon the probability of his conviction; and other matters bearing upon the particular case. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407.

94-8508. Sureties for guaranteed arrest bond certificates—filing of undertaking—guaranteed arrest bond certificate. (A) Any domestic or foreign surety company which has qualified to transact surety business in this state may, in any year, become surety in an amount not to exceed one hundred dollars (\$100.00) with respect to any guaranteed arrest bond certificates issued in such year by an automobile club or association or by an insurance company authorized to write automobile liability insurance within this state, by filing with the commissioner of insurance an undertaking thus to become surety.

(B) Such undertaking shall be in form to be prescribed by the commissioner and shall state the following:

(1) The name and address of the automobile club or clubs, automobile association, or insurance company or companies, or associations with respect to the guaranteed arrest bond certificates of which the surety company undertakes to be surety.

(2) The unqualified obligation of the surety company to pay the fine or forfeiture in an amount not to exceed one hundred dollars (\$100.00) of any person who, after posting a guaranteed arrest bond certificate with respect to which the surety company has undertaken to be surety, fails to make the appearance to guarantee which the guaranteed arrest bond certificate was posted.

(C) The term, guaranteed arrest bond certificate, means any printed card or other certificate issued by an automobile club, association or insurance company, to any of its members or insureds, which said card or certificate is signed by such member or insured and contains a printed statement that such automobile club, association or insurance company and a surety company, or an insurance company authorized to transact both automobile liability insurance and surety business in the state of Montana, guarantee the appearance of the person whose signature appears on the card or certificate and that they will, in the event of failure of such person to appear in court at the time of trial, pay any fine or for-

feiture imposed on such person in an amount not to exceed one hundred dollars (\$100.00).

History: En. Sec. 1, Ch. 39, L. 1957.

Title of Act

An act authorizing qualified surety companies to become surety with respect to guaranteed arrest bond certificates of automobile clubs and associations and insurance companies authorized to write auto-

mobile liability insurance within the state of Montana, and requiring the acceptance of such certificates in lieu of cash or property bail in the event of certain violations of motor vehicle laws; providing that all acts and parts of acts in conflict herewith are repealed.

94-8509. Violations of motor vehicle laws—posting of guaranteed arrest bond certificate in lieu of cash. Any guaranteed arrest bond certificate with respect to which a surety company has become surety or a guaranteed arrest bond certificate issued by an insurance company authorized to transact both automobile liability insurance and surety business within this state, as provided in section 1 [94-8508] hereof, shall, when posted by the person whose signature appears thereon, be accepted in lieu of cash bail in an amount not to exceed one hundred dollars (\$100.00), as a bail bond to guarantee the appearance of such person, in any court, including municipal courts, in this state, at such time as may be required by the court, when such person is arrested for violation of any motor vehicle law of this state or ordinance of any municipality in this state (except for the offense of driving while intoxicated or for any felony) committed prior to the date of expiration shown on such guaranteed arrest bond certificate so posted as a bail bond in any court in this state shall be subject to the forfeiture and enforcement provisions with respect to bail bonds posted in criminal cases as provided by law, and that any such guaranteed arrest bond certificate posted as bail bond in any municipal court in this state shall be subject to the forfeiture and enforcement provisions of the chapter or ordinance of the particular municipality pertaining to bail bonds posted.

History: En. Sec. 2, Ch. 39, L. 1957.

94-8510. Certification of names of sureties—withdrawal by surety company. The commissioner of insurance shall certify to each justice of the peace, police magistrate and district judge the names of surety companies who have become sureties with respect to guaranteed arrest bond certificates, and shall likewise immediately notify such official upon the withdrawal of such company as surety. No such withdrawal by any company shall be effective for thirty (30) days after the filing thereof with the state insurance commissioner.

History: En. Sec. 3, Ch. 39, L. 1957.

Repealing Clause

Section 4 of Ch. 39, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 88—WHO MAY BE WITNESSES IN CRIMINAL ACTIONS

94-8802. (12176) Competency of husband and wife as witnesses.

Operation and Effect

It was error to permit wife to testify against husband in trial for assault by unlawfully threatening another by pointing

a loaded revolver in violation of subd. 4 of section 94-602 where no offense against the wife was charged. *State v. Storm*, 124 M 102, 220 P 2d 674, 675.

94-8803. (12177) When the defendant is not a competent witness, etc.**Privilege against Self Incrimination**

In a prosecution for grand larceny, an instruction which had the effect of placing a burden on the defendant to explain his possession of stolen property was erroneous. Such a burden deprives defendant of his cloak of innocence and forces him to testify. The cases of *State v. Sparks*, 40 M 82, 105 P 87 and *State v. Willette*, 46 M 326, 127 P 1013, to the extent they im-

pose a burden to explain or testify concerning any charge of possessing stolen goods are overruled. *State v. Greeno*, 135 M 580, 342 P 2d 1052.

References

Cited or applied in *State v. Dillon*, 125 M 24, 230 P 2d 764, 767; *State v. London*, 131 M 410, 310 P 2d 571, 585.

CHAPTER 89—COMPELLING ATTENDANCE OF WITNESSES—SUBPOENAS**94-8904. (4945) Criminal actions not more than six to be subpoenaed, etc.****Operation and Effect**

This statute is to control the expenses of the county and is a limitation upon the clerk of the court and not upon the judge. Where the court allows more than six

witnesses to testify for the state the defendant is not prejudiced by the absence of an express order made by the court. *State v. Cockrell*, 131 M 254, 309 P 2d 316, 321.

CHAPTER 90—WITNESSES FROM WITHOUT STATE—HOW SECURED IN CRIMINAL PROCEEDINGS

Section 94-9003. Witness from another state summoned to testify in this state.

94-9003. Witness from another state summoned to testify in this state.

(1) If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation, which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. This certificate will be presented to a judge of a court of record in the county in which the witness is found.

(2) If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state, such judge may direct that such witness be forthwith brought before him; and the judge being satisfied of the desirability of such custody and delivery, for which such determination said certificate shall be prima facie proof, may order that said witness be forthwith taken into custody and delivered to an officer of this state, which order shall be sufficient authority to such officer to take such witness into custody and hold him unless and until he may be released by bail, recognizance, or order of the judge issuing the certificate.

(3) If the witness is summoned to attend and testify in this state, he shall be tendered the sum of ten cents (10¢) a mile for each mile and five dollars (\$5.00) for each day that he is required to travel and attend as a witness, provided further that in those cases in which the state wherein the witness is found has by statutory enactment required that the summoned witness be paid an amount or amounts in excess of the amount hereinbefore

in this paragraph provided, then said witness may be tendered said amount or amounts so required by said state to be tendered though the said amount or amounts so required to be tendered are in excess of the said amounts in this paragraph provided for. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

History: En. Sec. 3, Ch. 188, L. 1937; amd. Sec. 1, Ch. 117, L. 1949.

all acts and parts of acts in conflict therewith.

Amendment

The 1949 amendment added the proviso to the first sentence of paragraph (3).

Effective Date

Section 3 of Ch. 117, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved February 25, 1949.

Repealing Clause

Section 2 of Ch. 117, Laws 1949 repealed

CHAPTER 93—PROCEEDINGS ON INQUIRY AS TO SANITY OF A DEFENDANT

94-9301. (12213) Insane person cannot be tried or punished.

Declaratory of Common Law

This statute is declaratory of the common law as it has existed at least since Blackstone's day. Comparable or similar statutes have been enacted in all but four

states of the Union. In these four, it seems the common law without the aid of statute remains in force. *State v. Kitchens*, 129 M 331, 286 P 2d 1079, 1083.

94-9302. (12214) Doubts as to sanity of defendant, how determined, etc.

Construction

A doubt within the meaning of this section may come from matters which are brought to the attention of the trial judge wholly beyond the common-law record or which although occurring at the trial do not appear in the record, or which although shown in the record are not admissible as evidence bearing upon any issue before the trial court on the merits. The sources of that doubt need not be evidence. It is enough that the doubt comprehended by the statute arises from credible and trustworthy information brought to the attention of the trial court from any source at all. *State v. Kitchens*, 129 M 331, 286 P 2d 1079, 1083.

The question whether such a doubt is raised in any given case addresses itself directly to the sound judicial discretion of the trial court. But like any other matter thus committed to the discretion of a court or its judge this discretion may not be exercised arbitrarily. Its abuse will be reviewed on appeal, and where an abuse

does appear the reviewing court will say as a matter of law a doubt did arise which commanded action, and which therefore works a reversal for the error of the judge below in failing to heed its command. *State v. Kitchens*, 129 M 331, 286 P 2d 1079, 1083.

The weight of successive adjudications by four different courts and judges, in other proceedings, that the defendant was insane, were sufficient as a matter of law to raise the doubt required by this section. The testimony of a witness that the defendant was sane does not alter the case, for at this stage of the proceedings the court is only concerned with the preliminary question whether there is reason to doubt the defendant's sanity. *State v. Kitchens*, 129 M 331, 286 P 2d 1079, 1085.

References

Cited or applied in *State ex rel. Kitchens v. District Court*, 130 M 57, 294 P 2d 907, 908.

94-9303. (12215) Trial of the question of insanity—charge of court.

Presumption of continuing insanity as applied to accused in criminal case. 27 ALR 2d 121.

CHAPTER 94—COMPROMISING OFFENSES BY LEAVE OF COURT

94-9401. (12220) Compromise of offense for which civil action, etc.**References**

State v. Johnston, — M —, 367 P 2d 891, 893.

94-9402. (12221) Compromise by permission of the court, etc.**References**

State v. Johnston, — M —, 367 P 2d 891, 893.

94-9403. (12222) No public offense to be compromised except.**Restitution**

Where one is charged with uttering and delivering a fictitious check in violation

of section 94-2007 restitution is no defense. State v. Johnston, — M —, 367 P 2d 891, 893.

CHAPTER 95—DISMISSAL OF ACTIONS FOR WANT OF PROSECUTION OR OTHER REASONS

94-9501. (12223) When action may be dismissed.**Dismissal on Other Grounds**

Where district court dismissed information on grounds other than that provided by this section and record failed to show whether this ground was urged at the hearing in the district court or any ruling thereon, the case was reversed and the cause remanded to the district court for further proceedings not inconsistent with the opinion of the Supreme Court. State v. Saginaw, 124 M 225, 220 P 2d 1021, 1025; State v. McRae, 124 M 238, 220 P 2d 1025, 1027, distinguished in 300 P 2d 953.

Interruption of Period

From the six months mentioned in subdivision 2 of this section must be excluded the time elapsing between the date the demurrer to the information was erroneously sustained and the date of the remittitur of the Supreme Court reversing the decision. State v. Israel, 124 M 152, 220 P 2d 1003, 1013.

Operation and Effect

Whether or not motion to dismiss in-

formation under this section because of delay in trial should be granted or denied depends on whether or not "good cause" is shown for delay. State v. Saginaw, 124 M 225, 220 P 2d 1021, 1025; State v. McRae, 124 M 238, 220 P 2d 1025, 1027, distinguished in 300 P 2d 953.

In a prosecution for a misdemeanor, where the complaint is dismissed upon request by the state so that a new complaint may be issued which is substantially the same as the first complaint but amends it as to the time the offense was committed, such dismissal is not one under this section which would be a bar to the prosecution under section 94-9507. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 859, 860, 861, distinguished in 300 P 2d 953.

References

Cited or applied in State v. Porter, 130 M 299, 300 P 2d 952, 953; State ex rel. Keast v. District Court, 135 M 62, 336 P 2d 699, 700.

94-9502. (12224) Case may be continued.**References**

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240

P 2d 854, 861; State v. Porter, 130 M 299, 300 P 2d 952, 953.

94-9505. (12227) Dismissed on motion of court or application, etc.**References**

Cited or applied in State v. Storm, 127

M 414, 265 P 2d 971, 973; State v. Piverval, 127 M 427, 265 P 2d 969, 970.

94-9507. (12229) Dismissal a bar in misdemeanor, but not in felony.**Bar—How Raised**

The defense of the bar arising under this section may properly be raised by a

plea of not guilty, and all matters in proof thereof are admissible under the plea of not guilty by virtue of section 94-

6805. *State v. Porter*, 130 M 299, 300 P 2d 952, 954.

Dismissal on Demurrer

Defendant charged with sale of intoxicating liquor to a minor was not placed in former jeopardy in violation of section 18, article III, of the Montana Constitution, by a dismissal of the complaint upon his demurrer in justice court without any further proceedings. *State v. Moore*, 138 M 379, 357 P 2d 346, 347.

Information or Indictment Required for Bar

This section applies only to offenses where there is a filing of an information or the finding of an indictment. *State v. Moore*, 138 M 379, 357 P 2d 346, 347.

Operation and Effect

This section applies only to orders of dismissal as provided in section 94-9501. Therefore, in a justice of the peace pro-

ceeding where a complaint is dismissed upon request by the state so that a new complaint may be issued which is substantially the same as the first complaint but amends it as to the time the offense was committed, such dismissal is not a bar to the prosecution for the misdemeanor. *State ex rel. Borberg v. District Court*, 125 M 481, 240 P 2d 854, 857, 859 to 861, distinguished in 300 P 2d 953.

Release on Habeas Corpus

Where the person accused of a felony has been released on a habeas corpus under the provisions of section 94-9501, the county attorney is within his rights to ask leave to file a new information charging the same offense. *State ex rel. Keast v. District Court*, 135 M 62, 336 P 2d 699.

References

Cited or applied in *State ex rel. Treat v. District Court*, 122 M 249, 200 P 2d 248, 250.

CHAPTER 98—PROBATION, PAROLE AND CLEMENCY

- Section 94-9821. Act, how cited.
 94-9822. Board of pardons—organization.
 94-9823. Definitions.
 94-9824. Seal, orders, records, annual report.
 94-9825. Director and employees—salaries to be paid monthly—approval and auditing.
 94-9826. Expenses to be paid.
 94-9827. Legal adviser of the board.
 94-9828. Duties of the director.
 94-9829. Duties of probation and parole officers.
 94-9830. Conditions of probation or suspension of sentence.
 94-9831. Arrest—subsequent disposition.
 94-9832. Parole authority and procedure.
 94-9833. Conditional release.
 94-9834. Information from prison officials.
 94-9835. Persons may be heard—counsel.
 94-9836. Subpoenas.
 94-9837. Rules.
 94-9838. Return of parole violator.
 94-9839. Service of term for additional crime.
 94-9840. Discharge of prisoner, parolee or conditional releasee.
 94-9841. Cases of executive clemency.
 94-9842. Notice of hearing applications for executive clemency.
 94-9843. Publication of order.
 94-9844. Proof of publication.
 94-9845. Record of meeting, what to contain.
 94-9846. When publication not necessary.
 94-9847. Decision to be made.
 94-9848. Governor may respite.
 94-9849. Governor to report to legislative assembly.
 94-9850. Cases of juveniles excluded.
 94-9851. Effective date—application to persons presently on parole or probation or eligible for.

94-9801 to 94-9820. (12247 to 12266) Repealed.

Repeal

These sections (Secs. 2630 to 2646, Pen. C. 1895; Secs. 3 to 6, 8 to 12, p. 192, L. 1891; and Secs. 1 to 3, Ch. 95, L. 1907),

relating to pardons and paroles, were repealed by Sec. 31, Ch. 153, Laws 1955. For new provisions, see secs. 94-9821 to 94-9851.

94-9821. Act, how cited. This act shall be known and may be cited as the Probation, Parole and Executive Clemency Act.

History: En. Sec. 1, Ch. 153, L. 1955.

Title of Act

An act creating a board of pardons and prescribing the appointment and composition thereof, with power and duty to grant paroles, within restrictions, to supervise probations and suspended sentences, to recommend after duly noticed public hearing that the governor remit fines and forfeitures, grant pardons, absolute or conditional; grant commutations of punishments after conviction and judgment for offenses committed against the criminal laws of this state; providing for a director and a staff to administer the provisions of this act, and defining their duties; requiring records of board proceedings; providing for arrest of parolees or probationers upon violation of conditions of release; providing penalties for parole or probation violators; defining rights of attorneys to hearing before the board; providing the board with power to subpoena witnesses, and make rules and regulations under the provisions of this act; defining

governor's power to respite; requiring governor to report acts of executive clemency to the legislative assembly; excluding juveniles; providing a saving clause; repealing sections 94-9801, 94-9802, 94-9803, 94-9804, 94-9805, 94-9806, 94-9807, 94-9808, 94-9809, 94-9810, 94-9811, 94-9812, 94-9813, 94-9814, 94-9815, 94-9816, 94-9817, 94-9818, 94-9819 and 94-9820, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith; and providing an effective date clause.

Good Time Allowance

Under the "new parole laws" (sections 94-9821 to 94-9851) a prisoner retains the right to earn good time under the old good time statutes (sections 80-739, 80-741, repealed by Laws 1955, ch. 117, sec. 2 and section 80-740) and he is subject to forfeiture of this good time. *Hill v. State*, 139 M 407, 365 P 2d 44, 46.

The "new parole laws" (sections 94-9821 to 94-9851) have nothing to do with the forfeiture of earning of good time. *Hill v. State*, 139 M 407, 365 P 2d 44, 46.

94-9822. Board of pardons—organization. There is hereby created a state board of pardons, hereinafter referred to as the "board," consisting of three (3) members who shall be appointed by the governor with the advice and consent of the senate. The board shall administer the executive clemency, probation and parole system, and shall endeavor to secure the effective application and improvement of such system and the laws upon which it is based. The members of the board shall serve on a per diem basis and shall be paid at the rate of fifteen dollars (\$15.00) per day of service, plus actual and necessary expenses, and shall meet at least once each month at the state prison. The members of the board shall serve for terms of six (6) years, and until their successors are duly appointed and qualified, provided, however, that two (2) of those first appointed after this act takes effect, shall serve for terms of two (2) and four (4) years, respectively. The governor shall appoint the members of the board and call a meeting thereof within thirty (30) days of the effective date thereof. The board shall immediately thereafter set up the system herein provided for, and make the necessary appointments of its director, and other employees. Suitable quarters, supplies and equipment shall be provided. The principal office of the board shall be in Deer Lodge, Montana. A vacancy occurring before the expiration of any member's term of office shall be filled in the same manner for the unexpired portion of said term. The governor may at any time, after notice and hearing, remove any member for neglect of duty, malfeasance, misfeasance or nonfeasance in office.

History: En. Sec. 2, Ch. 153, L. 1955.

Powers of Board

The power of the state board of pardons is limited to permitting a convict to leave the enclosure of the state prison after he

has served a period of confinement fixed for him by the board in accordance with section 94-9833. *State ex rel. Herman v. Powell*, 139 M 583, 367 P 2d 553, 555.

Neither section 94-9832 nor any other section in the code gives the state board

of pardons power to extinguish a former sentence by paroling a man to a subsequent sentence. *State ex rel. Herman v. Powell*, 139 M 583, 367 P 2d 553, 555.

Maximum sentences cannot be changed or altered by the state board of pardons. *State ex rel. Herman v. Powell*, 139 M 583, 367 P 2d 553, 555.

The state board of pardons does not have the right to pardon or commute a sentence as the exclusive power to pardon and commute a sentence rests in the office of the governor under Art. VII, sec. 9 of the Montana Constitution. *State ex rel. Herman v. Powell*, 139 M 583, 367 P 2d 553, 555.

94-9823. Definitions. When used in this act, unless the context otherwise requires:

(a) "Probation" is the release by the court without imprisonment except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the board upon direction of the court.

(b) "Parole" is the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to its supervision.

(c) "Executive clemency" refers to the powers of the governor as provided by section 9 of Article VII of the Constitution of the state of Montana.

History: En. Sec. 3, Ch. 153, L. 1955.

Effect of Granting of a Parole

A parole releases from confinement a convict who has been committed to an institution, before the expiration of his sentence. *State ex rel. Herman v. Powell*, 139 M 583, 367 P 2d 553, 555.

The granting of a parole to an escape sentence by virtue of the wording of section 94-4203 did not result in a discharge of the original sentence. *State ex rel. Herman v. Powell*, 139 M 583, 367 P 2d 553, 557.

94-9824. Seal, orders, records, annual report. The board shall adopt an official seal of which the courts shall take judicial notice. A majority of the board shall constitute a quorum. Decision of the board may be by majority vote. The orders of the board shall not be reviewable except as to compliance of terms of this act. The board shall keep a record of its acts and decisions available to the public, providing, however, that all social records, including the pre-sentence report, the pre-parole report and the supervision history obtained in the discharge of official duty by any member or employee of the board, shall be confidential and shall not be disclosed directly or indirectly to anyone other than the members of the board or a judge; provided, however, that the board or a court may in its discretion, whenever the best interest or welfare of a particular defendant or prisoner makes such action desirable or helpful, permit the inspection of the report or any parts thereof by the prisoner or his attorney. At the close of each fiscal year the board shall submit to the governor, to the board of prison commissioners and to the legislature, a report with statistical data of its work, including research studies which it may make of probation, sentencing, parole or related functions, and a compilation and analysis of dispositions by criminal courts throughout the state.

History: En. Sec. 4, Ch. 153, L. 1955.

94-9825. Director and employees—salaries to be paid monthly—approval and auditing. The board shall appoint a state director of probation and parole, hereinafter referred to as the "director" who shall appoint, with

the approval of the board, an assistant director, probation and parole officers and other employees required to administer the provisions of this act. The director shall receive an annual salary of not more than eight thousand four hundred dollars (\$8,400) per annum payable monthly, which shall include compensation for all services rendered as interstate compact administrator. All other officers and employees of the board shall receive such compensation for their services as may be fixed by the board. All officers and employees of the board shall hold office at the pleasure of the board and shall perform such duties as are imposed on them by law or by the board.

The salaries of all officers and employees of the board shall be paid monthly after such salaries have been approved by the board upon claims therefor.

History: En. Sec. 5, Ch. 153, L. 1955; amd. Sec. 1, Ch. 122, L. 1957; amd. Sec. 11, Ch. 97, L. 1961; amd. Sec. 10, Ch. 225, L. 1963.

Amendments

The 1957 amendment raised the salary of the director from \$6,000 to \$7,000 per annum.

The 1961 amendment deleted from the end of the section the words "to be audited and approved by the state board of examiners."

The 1963 amendment substituted the provision for a maximum salary of \$8,400 for the director for a provision fixing the salary at \$7,000; and added to the second

sentence the words "which shall include compensation for all services rendered as interstate compact administrator."

Repealing Clause

Section 2 of Ch. 122, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 122, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 5, 1957.

Section 11 of Ch. 225, Laws 1963 read "This act shall be effective from and after February 28, 1963."

94-9826. Expenses to be paid. All expenses incurred by the board pursuant to the provisions of this act, including the actual and necessary traveling and other expenses and disbursements of the members thereof, its officers and employees, incurred while on business of the board either within or without the state, shall, unless otherwise provided in this act, be paid from funds appropriated, after being approved by the board upon claims therefor.

History: En. Sec. 6, Ch. 153, L. 1955; amd. Sec. 12, Ch. 97, L. 1961.

Amendment

The 1961 amendment deleted from the

end of the section the words "to be audited and approved by the state board of examiners."

94-9827. Legal adviser of the board. The board may appoint any qualified attorney or the attorney general to act as its legal adviser and represent it in all proceedings whenever so requested by the board.

History: En. Sec. 7, Ch. 153, L. 1955.

94-9828. Duties of the director. The director shall be the executive officer of the board. He shall be responsible for such investigation and supervision as may be requested by the board or the courts. He shall, subject to the approval of the board, divide the state into districts and assign probation and parole officers to serve in the various districts and courts; he shall obtain office quarters for such staff in each district as may be

necessary. He shall assign the secretarial, bookkeeping and accounting work to the clerical employees, including receipt and disbursement of money. He shall direct the work of the probation and parole officers and other employees assigned to him. He shall formulate methods of investigation, supervision, record keeping and reports. He shall conduct training courses for the staff. He shall seek to cooperate with all agencies, public and private, which are concerned with the treatment or welfare of persons on probation or parole. He shall further be charged with the administration of the provisions of the interstate compact for the supervision of parolees and probationers.

History: En. Sec. 8, Ch. 153, L. 1955.

94-9829. Duties of probation and parole officers. Probation and parole officers shall investigate all persons referred to them for investigation by the director of probation and parole or by any court to which they are instructed by the director to serve. They shall furnish to each person released under their supervision a written statement of the conditions of probation or parole and shall instruct him regarding same. They shall keep informed of the conduct and condition of each person released under their supervision and use all suitable methods to aid and encourage him to bring about improvement in his conduct and condition. Probation and parole officers shall keep detailed records of their work. They shall supervise the collection and disbursement of all moneys when so instructed by the director in accordance with the orders of a court. They shall make such reports in writing as the director may require.

History: En. Sec. 9, Ch. 153, L. 1955.

94-9830. Conditions of probation or suspension of sentence. The board may adopt general rules or regulations concerning the conditions of probation or suspension of sentence. Such conditions shall apply in the absence of any specific or inconsistent conditions imposed by a court. Nothing herein contained shall limit the authority of the court to impose or modify any general or specific conditions of probation or of suspension of sentence.

The probation and parole officer may recommend, and by order duly entered, a court may modify any condition of probation or suspension of sentence at any time. Due notice shall be given to the probation and parole officer before any such conditions are modified and he shall be given an opportunity to be heard thereon. The court shall cause a copy of any such order to be delivered to the probation and parole officer and the probationer.

History: En. Sec. 10, Ch. 153, L. 1955.

94-9831. Arrest—subsequent disposition. At any time during probation or suspension of sentence a court may issue a warrant for the arrest of the defendant for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be personally served upon the defendant. The warrant shall authorize all officers named therein to return such defendant to the custody of the court or to any suitable detention facility designated by the court. Any probation and parole officer may arrest such defendant without a warrant, or may

deputize any other officer with power of arrest to do so by giving him a written statement setting forth that the defendant has, in the judgment of said probation and parole officer, violated the conditions of his release. Such written statement delivered with the defendant by the arresting officer to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the defendant. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation. Provisions regarding release on bail of persons charged with crime, shall be applicable to the defendants arrested under these provisions.

Upon such arrest and detention, the probation and parole officer shall immediately notify the court with jurisdiction over such prisoner, and shall submit in writing a report showing in what manner the defendant has violated the conditions of release. Thereupon, or upon an arrest by warrant as herein provided, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charged. The hearing may be informal or summary. If the violation is established, the court may continue to revoke the probation or suspension of sentence, and may require him to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed.

A probationer or defendant under suspension of sentence for whose return a warrant has been issued by the court, shall, after the issuance of the warrant, if it is found that such warrant cannot be served, be deemed a fugitive from, or to have fled from, justice. If it shall appear that he has violated the provisions of his release, whether the time from the issuing of such warrant to the date of his arrest, or any part of it, shall be counted as time served on probation or suspended sentence, shall be determined by the court.

History: En. Sec. 11, Ch. 153, L. 1955.

94-9832. Parole authority and procedure. The board shall release on parole any person confined in the Montana state prison, except persons under sentence of death, when in its opinion there is reasonable probability that the prisoner can be released without detriment to himself or to the community, provided,

1. That no convict serving a time sentence shall be paroled until he shall have served at least one-quarter ($\frac{1}{4}$) of his full term, less good time allowances off, as provided in section 80-740; except that any convict serving a time sentence may be paroled after he shall have served, upon his term of sentence, twelve and one-half ($12\frac{1}{2}$) years;

2. No convict, serving a life sentence, shall be paroled until he shall have served twenty-five (25) years, less the good time allowances off, as provided in section 80-740. All paroles shall issue upon order of the board, duly adopted.

Within two (2) months after his admission and at such intervals thereafter as it may determine, the board shall consider all pertinent information regarding each prisoner, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment and

attitude in prison, and the reports of such physical and mental examinations as have been made.

Before ordering the parole of any prisoner, the board shall have the prisoner appear before it and shall interview him. A parole shall be ordered only for the best interest of society, not as an award of clemency; it shall not be considered a reduction of sentence or pardon. A prisoner shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal custody of the institution from which he was released, but shall be subject to the orders of the board.

The board may adopt such other rules not inconsistent with law as it may deem proper or necessary, with respect to the eligibility of prisoners for parole, the conduct of parole hearings or conditions to be imposed upon parolees. Whenever an order for parole is issued it shall recite the conditions thereof.

History: En. Sec. 12, Ch. 153, L. 1955.

Discretion of Board

Since the release of inmates on parole or by virtue of commutation of sentence rests in the discretion of the state board of pardons, their determination is not subject to review by the courts. *Goff v. State*, 139 M 641, 367 P 2d 557, 558.

Effect of Granting of a Parole

A parole releases from confinement a convict who has been committed to an institution, before the expiration of his sentence. *State ex rel. Herman v. Powell*, 139 M 583, 367 P 2d 553, 555.

The granting of a parole to an escape sentence by virtue of the wording of section 94-4203 did not result in a discharge of the original sentence. *State ex rel. Herman v. Powell*, 139 M 583, 367 P 2d 553, 557.

Hearing

Hearings involving inmates of the state prison are set by the state board of pardons and are entirely within their discretion. The only requirement for a hearing or interview arises when the board is about to order a parole. *Goff v. State*, 139 M 641, 367 P 2d 557, 558.

In petition for writ of habeas corpus brought by an inmate of the state prison, allegation of bias and prejudice by a member of the state board of pardons was without merit, where the files of the board disclosed that such member had disqualified

himself from participating in any hearing involving petitioner. *Goff v. State*, 139 M 641, 367 P 2d 557, 558.

Power of Board

This section does not give the state board of pardons power to extinguish a former sentence by paroling a man to a subsequent sentence. *State ex rel. Herman v. Powell*, 139 M 583, 367 P 2d 553, 555.

Right to Parole

All inmates confined in the Montana state prison are eligible for parole except those under death sentence. *State ex rel. Herman v. Powell*, 139 M 583, 367 P 2d 553, 556.

In the case of consecutive sentences a prisoner is required to serve a period equivalent to one-fourth of the combined total of each sentence (less good time) before he is eligible for parole although subsequent sentence is for escape. *State ex rel. Herman v. Powell*, 139 M 583, 367 P 2d 553, 557.

A prisoner is not entitled to release as a matter of right until he has completed his maximum sentence. *State ex rel. Herman v. Powell*, 139 M 583, 367 P 2d 553, 556; *Goff v. State*, 139 M 641, 367 P 2d 557, 559.

References

Cited or applied in *State ex rel. Ball v. Burrell*, 129 M 585, 292 P 2d 144.

94-9833. Conditional release. A prisoner having served one-fourth ($\frac{1}{4}$) of his term or terms, less good time allowances, shall upon parole, be deemed as released on parole until the expiration of the maximum term or terms for which he was sentenced less good time allowances as provided in section 80-740.

History: En. Sec. 13, Ch. 153, L. 1955.

Right to Parole

Good Time Allowance

Under section 80-740 a convict, by escaping, forfeits all his good time. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 557.

An inmate with multiple sentences, whether concurrent or consecutive, is eligible for parole. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 556.

94-9834. Information from prison officials. It shall be the duty of all prison officials to grant to the members of the board, or its properly accredited representatives, access at all reasonable times to any prisoner over whom the board has jurisdiction under this act, to provide for the board or such representatives facilities for communicating with and observing such prisoner, and to furnish to the board such reports as the board shall require concerning the conduct and character of any prisoner in their custody and any other facts deemed by the board pertinent in determining whether such prisoner shall be paroled.

History: En. Sec. 14, Ch. 153, L. 1955.

94-9835. Persons may be heard—counsel. The board shall be required to hear oral statements from all persons desiring to be heard before the board and any person may be represented by counsel, provided that the board shall have the power to regulate procedure at all hearings.

History: En. Sec. 15, Ch. 153, L. 1955.

94-9836. Subpoenas. The board shall have the power to issue subpoenas compelling the attendance of such witnesses and the production of such records, books, papers and documents as it may deem necessary for investigation of the case of any person before it. Subpoenas may be signed and oaths administered by the board or any member thereof. Subpoenas so issued may be served by any sheriff, constable, police officer, parole and probation officer, or other law-enforcement officer. In case of contumacy by, or refusal of any person to obey a subpoena issued to such person, any member of the board or duly authorized representative of any of them may make application to any court of record of this state and such court shall have jurisdiction to issue to such person an order requiring such person to appear before the board and there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail, or refuse to attend and testify, or to answer any lawful inquiry or to produce records, books, papers and other documents if it is in his power to do so, in obedience to a subpoena of the board or any member thereof, shall be punished by a fine of not more than two hundred dollars (\$200) or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

History: En. Sec. 16, Ch. 153, L. 1955.

94-9837. Rules. The board shall have the power and duty to make rules for the conduct of persons heretofore or hereafter placed on parole or

on probation under the supervision of the board by any court in this state, and for the investigation and supervision of such persons, except that the board shall not make any rule applying to a person on probation which conflicts with the conditions of probation imposed by the court.

History: En. Sec. 17, Ch. 153, L. 1955.

94-9838. Return of parole violator. At any time during release on parole or conditional release the board may issue a warrant for the arrest of the released prisoner for violations of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the prisoner. The warrant shall authorize all officers named therein to return such prisoner to the actual custody of the penal institution from which he was released, or to any other suitable detention facility designated by the board. Any probation and parole officer may arrest such prisoner without a warrant, or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the prisoner has, in the judgment of said probation and parole officer, violated the conditions of his release. Such written statement delivered with the prisoner by the arresting officer to the official in charge of the institution from which the prisoner was released or other place of detention, shall be sufficient warrant for the detention of the parolee or conditional releasee. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation. Pending hearing, as hereinafter provided, upon any charge of violation, the prisoner shall remain incarcerated in such institution.

Upon such arrest and detention, the probation and parole officer shall immediately notify the board and shall submit in writing a report showing in what manner the prisoner has violated the conditions of release. Thereupon, or upon an arrest by warrant as herein provided, the board shall cause the prisoner to be promptly brought before it for a hearing on the violation charged, under such rules and regulations as the board may adopt. If the violation is established, the board may continue or revoke the parole or conditional release, or enter such other order as it may see fit.

A prisoner for whose return a warrant has been issued by the board shall, after the issuance of such warrant, if it is found that the warrant cannot be served, be deemed a fugitive or to have fled from justice. If it shall appear that he has violated the provisions of his release, whether the time from the issuing of such warrant to the date of his arrest, or any part of it, shall be counted as time served under the sentence, shall be determined by the board.

History: En. Sec. 18, Ch. 153, L. 1955.

94-9839. Service of term for additional crime. Any prisoner who commits a crime while at large upon parole or conditional release, and who is convicted and sentenced therefor, shall serve such sentence concurrently with the terms under which he was released, unless otherwise ordered by the court in sentencing for the new offense.

History: En. Sec. 19, Ch. 153, L. 1955.

94-9840. Discharge of prisoner, parolee or conditional releasee. The period served on parole or conditional release shall be deemed service of the term of imprisonment, and, subject to the provisions contained in section 18 [94-9838] herein relating to a prisoner who is a fugitive from, or has fled from, justice, the total time served may not exceed the maximum term or sentence. When a prisoner on parole or conditional release has performed the obligations of his release, the board shall make a final order or discharge and issue a certificate of discharge to the prisoner.

History: En. Sec. 20, Ch. 153, L. 1955.

94-9841. Cases of executive clemency. The board shall investigate and report to the governor with respect to all cases of pardons, remissions of fines and forfeitures, and commutations of punishment after conviction and judgment for any offenses committed against the criminal laws of the state. A majority of the board shall advise, investigate, and approve each such case before the action of the governor shall be final. All applications for executive clemency shall be made to the board, which shall cause an investigation to be made of all the circumstances surrounding the crime for which the applicant was convicted, and as to the individual circumstances relating to social conditions of the applicant. If the board, or a majority thereof, approves such application for executive clemency, it shall advise the governor and recommend action to be taken.

History: En. Sec. 21, Ch. 153, L. 1955.

94-9842. Notice of hearing applications for executive clemency. After the board has duly considered an application for executive clemency, and has by majority vote favored a recommendation of executive clemency to the governor, it must pass an order in substance as follows:

"Whereas, the Board of Pardons has officially received an application for Executive Clemency concerning _____, a convict confined in the State Prison (or to one _____, who has been found guilty of an offense committed against the laws of the state), who was convicted of the crime of _____ committed at _____, in the County of _____, State of Montana, on the ____ day of _____, 19____, and sentenced for a term of ____ years.

"Therefore, be it ordered that ____ the ____ day of _____, 19____, be set apart for the consideration of said Executive Clemency matter; and all persons having an interest therein desiring to be heard either for or against the granting of the pardon (or commutation, remission of the fine or forfeiture) are hereby notified to be present at ____ o'clock of said day, at _____.

"Further, ordered that a copy of this order be printed and published in the _____ (here insert name of some newspaper of general circulation in the county where the crime was committed) a daily (or weekly) newspaper printed and published at _____ in the county of _____, once each week for two weeks beginning, _____, 19____, and ending _____."

History: En. Sec. 22, Ch. 153, L. 1955.

94-9843. Publication of order. The board must cause a copy of such order to be published in the newspaper therein designated, at least once a week for two weeks prior to the hearing, and at the same time cause to be deposited in the postoffice at the seat of government, postpaid, a copy of said order and notice addressed to the district judge, county attorney and sheriff, respectively, of the county where the crime was committed, and in like manner mail a copy of the order to the petitioner and the convict.

History: En. Sec. 23, Ch. 153, L. 1955.

94-9844. Proof of publication. Prior to the time set for hearing, proof of the publication of notice must be made by the publisher or managing agent.

History: En. Sec. 24, Ch. 153, L. 1955.

94-9845. Record of meeting, what to contain. At the hearing the board must cause to be kept a record showing:

1. The name of all persons appearing before the board on behalf of the person pardoned by the governor;
2. The name of all persons appearing before the board in opposition to the granting of the same;
3. The testimony of all persons giving evidence before the board;
4. That the affidavit and return from the printer of the publication of the notice and order of hearing was on file prior to the hearing.

History: En. Sec. 25, Ch. 153, L. 1955.

94-9846. When publication not necessary. No publication need be made as provided in sections 22, 23 and 24 [94-9842, 94-9843 and 94-9844], in the following cases:

1. When there is imminent danger of the death of the person convicted or imprisoned.
2. When the term of imprisonment of the applicant is within ten (10) days of its expiration.

History: En. Sec. 26, Ch. 153, L. 1955.

94-9847. Decision to be made. Within thirty (30) days after the hearing of any case, the board must make a decision in writing, and if such decision be made to recommend executive clemency, the copy of the decision, together with all papers used in each case shall be immediately transmitted to the governor.

History: En. Sec. 27, Ch. 153, L. 1955.

94-9848. Governor may respite. The governor has the power to grant respites after conviction and judgment, for any offenses committed against the criminal laws of the state, for such time as he thinks proper.

History: En. Sec. 28, Ch. 153, L. 1955.

94-9849. Governor to report to legislative assembly. The governor must communicate to the legislative assembly at each regular session, each case of remission of fine or forfeiture, reprieve, commutation, or pardon

granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of remission, commutation, pardon or reprieve, with the reason for granting the same, and the objection, if any, of any of the members of the board made thereto.

History: En. Sec. 29, Ch. 153, L. 1955.

94-9850. Cases of juveniles excluded. The provisions of this act shall not apply to probation in the juvenile courts or to parole from state institutions for juveniles.

History: En. Sec. 30, Ch. 153, L. 1955.

94-9851. Effective date—application to persons presently on parole or probation or eligible for. This act shall be in full force and effect from and after April 1, 1955. The provisions of this act are hereby extended to all persons who, at the effective date hereof, may be on probation or parole, or eligible to be placed on probation or parole under existing laws, with the same force and effect as if this act had been in operation at the time such persons were placed on probation or parole or became eligible to be placed thereon as the case may be, provided that no person convicted and sentenced before the effective date hereof shall have his rights and earned good time reduced by the application of this act.

History: En. Sec. 33, Ch. 153, L. 1955.

Separability Clause

Repealing Clause

Section 31 of Ch. 153, Laws 1955 read "That sections 94-9801, 94-9802, 94-9803, 94-9804, 94-9805, 94-9806, 94-9807, 94-9808, 94-9809, 94-9810, 94-9811, 94-9812, 94-9813, 94-9814, 94-9815, 94-9816, 94-9817, 94-9818, 94-9819 and 94-9820, Revised Codes of Montana, 1947, and all other acts and parts of acts inconsistent with the provisions of this act are hereby repealed."

Section 32 of Ch. 153, Laws 1955 read "If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

CHAPTER 99—BASTARDY PROCEEDINGS

94-9901. (12267) Complaint in bastardy, what to contain, how entitled.

Cross-Reference

Application of Montana Rules of Civil

Procedure to this chapter, see Table A, M. R. Civ. P. (sec. 93-2711-7).

94-9908. (12274) Power of court over judgments and orders.

Foreign filiation or support order in bastardy proceedings, requiring periodic

payments, as extraterritorially enforceable. 16 ALR 2d 1098.

CHAPTER 100—JUSTICES' AND POLICE COURT PROCEEDINGS—APPEALS

Section 94-100-25. Proceedings on plea of guilty or on conviction.

94-100-1. (12302) Proceedings must be by complaint.

Sufficiency of Complaint

A complaint was sufficient where it stated facts constituting a public offense and charged a violation of the provisions of section 4-414, which was a misdemeanor

(4-439) within the jurisdiction of the justice of the peace court under section 94-4916. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 856.

94-100-2. (12303) When warrant of arrest must issue—form.**References**

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 215.

94-100-4. (12305) Plea, how put in.**Written "Special Plea in Bar" Not Authorized**

Justice of the peace was acting within his jurisdiction and in accordance with the law in overruling the defendant's written "Special Plea in Bar" and order-

ing the defendant to answer to the complaint in accordance with this section and sections 94-6801 and 94-6802. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 857, 859, 861.

94-100-10. (12311) New complaint.**References**

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d

854, 856; City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 207.

94-100-25. (12326) Proceedings on plea of guilty or on conviction.

When the defendant pleads guilty, or is convicted, either by the court or by a jury, the court must render judgment thereon of fine or imprisonment, or both, as the case may be. The judgment must be executed by the sheriff, constable, marshal or policeman of the jurisdiction in which the conviction was had.

History: En. Sec. 2704, Pen. C. 1895; re-en. Sec. 9608, Rev. C. 1907; re-en. Sec. 12326, R. C. M. 1921; amd. Sec. 1, Ch. 50, L. 1955. Cal. Pen. C. Sec. 1445.

Amendment

The 1955 amendment substituted the word "or" for "and" between the words "fine" and "imprisonment."

94-100-33. (12334) Defendant may appeal.**References**

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d

854, 861; State ex rel. Aho v. Justice Court of Laurel Township, 131 M 585, 313 P 2d 542.

94-100-34. (12335) Notice of appeal.**Application of Section**

This section permitting appeal by notice in open court does not apply to the taking of an appeal to the Supreme Court from a judgment of a district court. State ex rel. Treat v. District Court, 124 M 234, 221 P 2d 436, 437.

References

Cited in State ex rel. Aho v. Justice Court of Laurel Township, 131 M 585, 313 P 2d 542; Town of White Sulphur Springs v. Voise, 136 M 1, 343 P 2d 855.

94-100-38. (12339) Trial anew.**Effect of Payment of Fine after Appeal**

Where defendant was convicted in a police court of the violation of a town ordinance and appealed to the district court and served notice of his appeal to the district court while in jail serving a sentence imposed for his nonpayment of the fine, the fact the defendant had paid the fine before the hearing in the district court did not effect an abandonment of his appeal. Town of White Sulphur Springs v. Voise, 136 M 1, 343 P 2d 855, 857.

Operation and Effect

Where an appeal is taken to the district court from a conviction in a police court

for a liquor law violation, but neither the city nor the defendant requested the cause be set for trial, the judge of the court could not order the appeal dismissed "for want of prosecution" without giving notice to the defendant. Such an order is void and in excess of jurisdiction. State ex rel. Healy v. District Court, 125 M 77, 230 P 2d 763.

Trial de Novo

The district court does not, on appeal from a police court, sit as a court of review, but it tries the cause de novo. Town of White Sulphur Springs v. Voise, 136 M 1, 343 P 2d 855, 857.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 861; State ex rel. Aho v. Justice Court

of Laurel Township, 131 M 585, 313 P 2d 542; City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 208.

94-100-40. (12341) Judgment of imprisonment or fine, how executed.**References**

Cited or applied in Town of White Sul-

phur Springs v. Voise, 136 M 1, 343 P 2d 855, 856.

94-100-41. (12342) Defendant may be admitted to bail, etc.**References**

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 207.

CHAPTER 101—THE WRIT OF HABEAS CORPUS

94-101-1. (12348) Who may prosecute writ.**Cross-Reference**

Application of Montana Rules of Civil Procedure to this chapter, see Table A, M. R. Civ. P. (sec. 93-2711-7).

References

Cited or applied in State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 704.

94-101-2. (12349) Application for, how made.**References**

Cited or applied in Application of Enke,

129 M 353, 287 P 2d 19, 22, cert. den. 350 U S 923, 100 L Ed 808, 76 S Ct 212.

94-101-4. (12351) Writ must be granted without delay.**Mandamus to Compel Action by District Court**

A writ of mandate to compel district court to take action on a petition for a writ of habeas corpus was denied by the

supreme court where petitioner did not establish a clear legal right to have the writ of habeas corpus issued. Petition of John J. Tomich, 139 M 624, 365 P 2d 950.

94-101-14. (12361) When to remand party.**Denial of Federal Constitutional Rights**

A writ of habeas corpus is not available in the state courts of Montana to

correct denials of federal constitutional rights. Brown v. State, 202 F Supp 29, 30.

94-101-15. (12362) Grounds of discharge in certain cases.**Motives of Prosecution**

On a hearing of a habeas corpus sued out for the liberation of one who is sought to be extradited for the violation of the criminal laws of another state, upon a warrant of the governor issued upon

a requisition of a demanding state, it is not admissible to hear evidence upon, or to inquire into, the motives or purposes of the prosecution. State v. Booth, 134 M 235, 328 P 2d 1104, 1111.

94-101-21. (12368) Person illegally restrained may be committed to, etc.**References**

Cited or applied in Application of Butts, 129 M 440, 289 P 2d 949, 951.

CHAPTER 201—CORONER'S INQUESTS

Section 94-201-6. Testimony in writing and where filed.

94-201-6. (12386) Testimony in writing and where filed. The testimony of the witnesses examined before the coroner's jury must be reduced

to writing by the coroner, or under his direction, and forthwith filed by him, with the inquisition, in the office of the clerk of the district court of the county. The coroner must order the inquest proceedings recorded and transcribed by a qualified stenographer and such recording and transcribing expenses shall be paid by the county upon claims duly rendered and certified to by the coroner in the same manner as other claims against the county are paid.

History: En. Sec. 2795, Pen. C. 1895; re-en. Sec. 9668, Rev. C. 1907; re-en. Sec. 12386, R. C. M. 1921; amd. Sec. 1, Ch. 56, L. 1959. Cal. Pen. C. Sec. 1515.

Repealing Clause

Section 2 of Ch. 56, Laws 1959, repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment added the last sentence to this section.

CHAPTER 301—SEARCH WARRANTS

94-301-19. (12412) Property, when to be restored.

Forfeiture of money used in connection with gambling or lottery, or seized by officers in connection with an arrest or

search on premises where such activities took place. 19 ALR 2d 1228.

CHAPTER 501—UNIFORM CRIMINAL EXTRADITION ACT

94-501-1. Definitions.

References

Cited or applied in *State ex rel. Middlemas v. District Court*, 125 M 310, 233

P 2d 1038, 1039; *State v. Booth*, 134 M 235, 328 P 2d 1104, 1109.

94-501-3. Demand—form.

Improper Form, Discharge of Fugitive

If the demand for extradition to the governor of the asylum state is not in proper form, the alleged fugitive will be discharged. *State v. Booth*, 134 M 235, 328 P 2d 1104, 1109.

Substantial Charge of Crime

A substantial charge of crime in the required papers submitted by the demanding state is a sufficient basis for extradition. *State v. Booth*, 134 M 235, 328 P 2d 1104, 1110.

94-501-6. Extradition of persons not present in demanding state, etc.

References

Cited in *State v. Booth*, 134 M 235, 328 P 2d 1104, 1109.

94-501-7. Issuance of warrant of arrest by governor—recitals therein.

References

Cited or applied in *State v. MacLean*, 129 M 500, 291 P 2d 250, 252.

94-501-20. Guilt or innocence of accused, when inquired into.

Operation and Effect

It is sufficient in habeas corpus proceedings to justify holding the petitioner if it is shown in Montana that the governor received from the governor of Oregon a copy of the affidavit made by the prosecuting witness, charging the defend-

ant with a felony and also of the warrant of arrest issued by the judge of a district court of the state of Oregon and duly authenticated. *State ex rel. Middlemas v. District Court*, 125 M 310, 233 P 2d 1038, 1040.

CHAPTER 801—FINES AND FORFEITURES—DISPOSAL OF

Section 94-801-1. Fines, costs, and forfeitures, how disposed of.

94-801-2. Traffic fines collected from juvenile offenders—disposition.

94-801-1. (12433) Fines, costs, and forfeitures, how disposed of. All fines and forfeitures collected in any court, except police courts, must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred; and after such costs are paid, the residue must, save as hereinafter provided, be paid to the county treasurer of the county in which the court is held and if not otherwise provided by law, by him credited to the general school fund of said county. In the event the fine or forfeiture arises from an action commenced pursuant to section 94-301 or section 94-304 of this code, the residue thereof, after such costs are paid, may be directed by the court to be paid, in whole or in part, to the wife, or to the guardian or custodian of the child or children. If the said fine or forfeiture is paid to the county treasurer at the time of such payment there shall be filed with the county treasurer, a complete statement showing the total of the fine or forfeiture received or incurred with an itemized statement of the costs incurred by the county in such action, which statement shall give the title of the cause and be subscribed by the person or officer making such payment.

History: En. Sec. 2910, Pen. C. 1895; re-en. Sec. 9715, Rev. C. 1907; re-en. Sec. 12433, R. C. M. 1921; amd. Sec. 1, Ch. 83, L. 1923; amd. Sec. 1, Ch. 92, L. 1961. Cal. Pen. C. Sec. 1570.

Amendment

The 1961 amendment inserted the words "save as hereinafter provided" after "the residue must" in the first sentence; divided the former section into two sentences, the first and third sentences in the amended

section; inserted the present second sentence; and, at the beginning of the present third sentence, substituted the words "If the said fine or forfeiture is paid to the county treasurer at the time of such payment" for "at the time of payment of any such fine or forfeiture."

Repealing Clause

Section 2 of Ch. 92, Laws 1961 repealed all acts and parts of acts in conflict therewith.

94-801-2. Traffic fines collected from juvenile offenders—disposition. All fines collected by the district courts from children under eighteen (18) years of age, for unlawful operation of motor vehicles resulting from traffic summonses issued by the peace officers of the cities, counties, or by highway patrolmen shall be retained by the county treasurer of the county in which the offense occurred and at the end of each month distributed as follows:

(a) Fines collected as the result of summonses issued by city police officers shall be distributed to the city in which the police officer is employed, and credited to the city general fund;

(b) Fines collected as the result of summonses issued by county peace officers shall be retained by the county treasurer and credited to the county road fund;

(c) Fines collected as the result of summonses issued by state highway patrolmen shall be paid to the state treasurer of Montana and by him credited to the general fund of the state.

History: En. Sec. 1, Ch. 149, L. 1961.

Title of Act

An act to provide for the distribution of fines collected by district courts for

the unlawful operation of motor vehicles by children under the age of eighteen (18) years; providing for time of such distribution; repealing all acts or parts of acts in conflict herewith.

Repealing Clause

Section 2 of Ch. 149, Laws 1961 repealed all acts and parts of acts in conflict therewith.

CHAPTER 901—RECIPROCAL ENFORCEMENT OF SUPPORT

(Repealed—Section 3, Chapter 208, Laws of 1961)

94-901-1 to 94-901-18. Repealed.

Repeal

These sections (Secs. 1 to 18, Ch. 222, L. 1951), relating to reciprocal enforce-

ment of support, were repealed by Sec. 3, Ch. 208, Laws 1961. For new provisions, see secs. 93-2601-1 to 93-2601-40.

CHAPTER 1001—CRIMINAL LAW STUDY COMMISSION

Section 94-1001-1.	Intent and purpose of act.
94-1001-2.	Appointment of criminal law study commission—scope of work.
94-1001-3.	Composition of commission—application for appointment.
94-1001-4.	Distribution of proposed changes to bench and bar.
94-1001-5.	Submission of final draft to supreme court.
94-1001-6.	Notice by supreme court to bench and bar—hearings.
94-1001-7.	Legislative adoption required.
94-1001-8.	Changes suggested by supreme court.
94-1001-9.	Employment of secretary and research services by commission.
94-1001-10.	Reimbursement of commission members.
94-1001-11.	Officers of commission—rules—records.

94-1001-1. Intent and purpose of act. The intent and purpose of this act is to establish a commission to suggest changes in the criminal law of the state of Montana to the end of uniformity in definition of crimes, arrests, trials, sentencing, pardon and parole.

History: En. Sec. 1, Ch. 103, L. 1963.

Title of Act

An act authorizing and empowering the supreme court of the state of Montana to recommend changes in the criminal law of the state of Montana to the end of uniformity in definition of crimes, arrests, trials, sentencing, pardon and parole, for the purpose of simplifying judicial proceedings and promoting the speedy determination of litigation upon its merits; creating a commission to prepare suggested changes in the criminal law of the state of Montana and prescribing the membership

and powers and duties of said commission; providing for employment of a secretary-stenographer of the commission and employment of research agencies, if deemed necessary; providing for the payment of actual travel and other expenses incurred by members of said commission in the discharge of their duties; providing that such recommended changes in the criminal law of the state of Montana shall be submitted to the Thirty-ninth Legislative Assembly of the state of Montana for its consideration; repealing all acts and parts of acts in conflict herewith and providing for an effective date of this act.

94-1001-2. Appointment of criminal law study commission—scope of work. That within thirty (30) days following the adjournment of this legislative assembly, the supreme court of Montana shall appoint a commission of eleven (11) persons, which commission shall meet and organize itself within thirty (30) days following appointment; and which commission shall make a complete study, consider and finally prepare suggested changes in the criminal law of the state of Montana to the end of uniformity in definition of crimes, arrests, trials, sentencing, pardon and parole, which suggested changes shall be comprehensive in scope.

History: En. Sec. 2, Ch. 103, L. 1963.

94-1001-3. Composition of commission—application for appointment.

The commission shall be composed of the chief justice of the supreme court of the state of Montana, or an associate justice of the supreme court designated by the chief justice, three (3) judges from the district court of the state, and seven (7) lawyers. The judges so selected shall be from a list of suggested members submitted to the supreme court by the president of the Montana judges' association. Any lawyer actively engaged in the practice of law in the state of Montana or members of the faculty of the Montana university law school may submit an application to the supreme court indicating a desire to serve on such commission. The supreme court shall select members of the commission from among the applicants. The supreme court shall have the power to provide for terms of office, removals from office, filling of vacancies and changes in personnel of the commission.

History: En. Sec. 3, Ch. 103, L. 1963.

94-1001-4. Distribution of proposed changes to bench and bar. The commission so appointed shall prepare its suggested changes and shall distribute copies to the bench and bar of the state for their consideration and suggestions as they may submit to the commission.

History: En. Sec. 4, Ch. 103, L. 1963.

94-1001-5. Submission of final draft to supreme court. The commission shall within six (6) months after distribution of copies of the suggested changes submit the tentative final draft of suggested changes in the criminal law of the state of Montana, to the supreme court for approval.

History: En. Sec. 5, Ch. 103, L. 1963.

94-1001-6. Notice by supreme court to bench and bar—hearings. The submission of the tentative final draft to the supreme court will be noticed by the court by mailing notice of hearing to all district judges of the state and all attorneys licensed to practice in the Montana courts, as shown by the records of the clerk of the supreme court, and heard by it within ninety (90) days after submission by the commission, and all interested persons and organizations may appear that day by petition specifying their suggestions or objections thereon.

History: En. Sec. 6, Ch. 103, L. 1963.

94-1001-7. Legislative adoption required. Any suggested changes promulgated under this act shall be effective only upon adoption by the legislature.

History: En. Sec. 7, Ch. 103, L. 1963.

94-1001-8. Changes suggested by supreme court. The supreme court of this state shall have the right to suggest changes and amendments to the criminal law of the state of Montana from time to time for consideration by the legislative assembly.

History: En. Sec. 8, Ch. 103, L. 1963.

94-1001-9. Employment of secretary and research services by commission. The said commission may from time to time employ a secretary-stenographer, as it deems necessary, to assist in its work, and shall fix

the compensation of such secretary-stenographer. It shall further have the power to employ the services of any research agency which it deems necessary in the discharge of its duties.

History: En. Sec. 9, Ch. 103, L. 1963.

94-1001-10. Reimbursement of commission members. Members of said commission shall serve without compensation, but shall be reimbursed for actual travel and other expenses incurred in the discharge of their duties, including attendance at meetings.

History: En. Sec. 10, Ch. 103, L. 1963.

94-1001-11. Officers of commission—rules—records. The said commission shall from time to time elect one of its members as chairman, and may from time to time elect such other officers from among its membership as the commission may deem desirable. The commission is empowered to adopt rules for its own procedure, and to make all arrangements for its meetings, and to carry out the purpose for which it is created. The commission is directed to keep accurate records of its activities and proceedings.

History: En. Sec. 11, Ch. 103, L. 1963.

phrases may be declared unconstitutional or invalid."

Separability Clause

Section 12 of Ch. 103, Laws 1963 read "If any sentence, section, clause or phrase of this act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this act. The legislative assembly of the state of Montana hereby declares that it would have passed this act irrespective of the fact that any one or more sections, sentences, clauses or

Repealing Clause

Section 13 of Ch. 103, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 14 of Ch. 103, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

CHAPTER 1101—INTERSTATE AGREEMENT ON DETAINERS

- Section 94-1101-1.** Agreement on detainees adopted—text.
94-1101-2. District courts to act.
94-1101-3. Enforcement and cooperation by public agencies.
94-1101-4. Escape from custody on detainee—penalty.
94-1101-5. Institutional officers to honor agreement.
94-1101-6. Coordinator of agreement—appointment—duties.

94-1101-1. Agreement on detainees adopted—text. The agreement on detainees is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows: The contracting states solemnly agree that:

Article I

The party states find that charges outstanding against a prisoner, detainees based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status

of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III hereof or at the time that a request for custody or availability is initiated pursuant to article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to article III or article IV hereof.

Article III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial at the next term of court after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt request[ed].

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainees have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; and provided further that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment

under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(b) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V (e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article V

(a) In response to a request made under article III or article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the periods provided by this act, the ap-

propriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

Article VI

(a) In determining the duration and expiration dates of the time periods provided in articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect nor shall it affect their rights in respect thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 215, L. 1963.

Title of Act

An act to provide for the reciprocal and expeditious disposition of detainees filed against inmates of prisons or other correctional institutions of party states; to provide for the speedy trial of persons confined in a penal or other correctional institution of a party state on charges and detainees based on untried indictments, informations or complaints and to provide

for the final disposition of such charges and detainees; to provide that temporary custody of such prisoners may be made available to appropriate officers of party states for trial; to provide that escape from such temporary custody shall be punishable by confinement in the state prison for a term of not less than one year nor more than ten years; to provide for the appointment of a coordinator of this agreement; providing for an effective date and a repealing clause.

94-1101-2. District courts to act. The phrase "appropriate court" as used in the agreement on detainees shall, with reference to the courts of this state, mean; district courts.

History: En. Sec. 2, Ch. 215, L. 1963.

94-1101-3. Enforcement and cooperation by public agencies. All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainees and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

History: En. Sec. 3, Ch. 215, L. 1963.

94-1101-4. Escape from custody on detainer—penalty. Every prisoner confined in state prison for a term less than for life who has been lawfully delivered into the temporary custody of appropriate officers of a party state for trial on a charge or detainer based on an untried indictment, information or complaint and who escapes therefrom, is punishable by imprisonment in the state prison for a term of not less than one year nor more than ten years; said second term of imprisonment to commence from the time he would otherwise have been discharged from said prison.

History: En. Sec. 4, Ch. 215, L. 1963.

94-1101-5. Institutional officers to honor agreement. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers.

History: En. Sec. 5, Ch. 215, L. 1963.

94-1101-6. Coordinator of agreement—appointment—duties. The governor shall appoint an officer of this state as coordinator of this agreement who, acting jointly with like officers of party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this act, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

History: En. Sec. 6, Ch. 215, L. 1963.

Transmittal of Copies of Act

Section 7 of Ch. 215, Laws 1963 read "Copies of this act shall, upon its approval, be transmitted to the governor of each state, the attorney general and the administrator of general services of the United States, and the council of state governments."

Repealing Clause

Section 8 of Ch. 215, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 9 of Ch. 215, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 9, 1963.

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